

# Lack of Oversight: The Relationship Between Congress and the FBI, 1907-1975

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LACK OF OVERSIGHT: THE RELATIONSHIP  
BETWEEN CONGRESS AND THE  
FBI, 1907-1975

by

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ABSTRACT  
LACK OF OVERSIGHT: THE RELATIONSHIP  
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Aaron J. Stockham

Marquette University, 2011

This study fills a hole left in research about the Federal Bureau of Investigation. While previous authors have examined the Bureau's relationship to the executive branch, especially under its long-time Director, J. Edgar Hoover, comparatively little has been written about the Bureau's relationship with the United States Congress. Using their investigatory and appropriations powers, members of Congress could have maintained stringent oversight of Bureau officials' activities. Instead, members of Congress either deferred to the executive branch, especially presidents and attorneys general, or developed close relationships with Bureau officials based on a shared politics, mainly anti-communism during the Cold War. Examining the relationship from 1907 through 1975 offers numerous examples of members of Congress looking beyond their oversight responsibilities.

Even as Congress investigated Bureau actions, no meaningful legislation was passed limiting Bureau activities. Instead, members of Congress left it to the executive branch to correct problems. On issues like wiretapping, Bureau officials either misled Congress about the extent of their activities or ignored Congressional mandates in order to continue their anti-communist agenda.

As the Cold War developed, certain Congressional committees began to use Bureau files confidentially in order to educate the public on the dangers of communism. While Bureau officials initially supported such liaison relationships, they were based on the source of the committees' information never coming to light. Once that condition was violated, Bureau officials terminated the relationship, hampering the committees' ability to use the communist issue to further political careers.

To fully understand the FBI's role in 20<sup>th</sup>-century America, the relationship with Congress must be further explored. Focusing solely on Director Hoover or the executive branch is too narrow. Members of Congress had equal opportunity to oversee Bureau activities. That they did not fulfill this responsibility portrays the difficulty Americans have in containing the actions of investigatory agencies.

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### AARON J. STOCKHAM

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## **Introduction**

In his 1908 report to Congress, Attorney General Charles Bonaparte hinted at how a bureau of investigatory agents would be managed by the Department of Justice. These new agents would deliver “daily reports” to their chief examiner, who would “summarize these for submission each day to the Attorney-General.... The Attorney-General knows, or ought to know, at all times what they are doing and at what cost.”<sup>1</sup> An act of Congress had unintentionally forced the Department of Justice to create such a bureau in 1908 and the results had been “moderately satisfactory.”<sup>2</sup> From its very beginning, the Department of Justice’s Bureau of Investigation had been primarily a creation of the executive branch. Congress’s role proved to be secondary then and would continue to be so during the subsequent decades marked by the Bureau’s growth in power and stature. The scholarship on the Bureau bears this out, with very little focus on its relationship with the legislative branch.

The FBI has been the subject of interest to historians, political scientists, journalists, and the general public. It has been studied as a federal bureaucracy, as reflecting changes in the popular culture, and as an institution that had a profound effect on civil liberties and the nation’s security. Writers have focused particularly on the long tenure of its famed Director, J. Edgar Hoover, on specific cases, and on its relationship with other federal intelligence agencies. Yet, few have explored the relationship between the FBI and Congress, a relative indifference that seems inappropriate given the central,

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<sup>1</sup> *Annual Report of the Attorney-General of the United States for the Year 1908* (Washington, D.C.: United States Government Printing Office, 1908), 7.

<sup>2</sup> Ibid.

if indirect, role of Congress in shaping the striking growth in influence and powers of the FBI—whether when Congress enacted laws expanding federal law enforcement's jurisdiction, increased FBI appropriations that led to the meteoric growth in the FBI's personnel, or when members of Congress either exercised or abandoned its oversight responsibilities purportedly for “national security” reasons. This dissertation repairs that deficiency, exploring the often paradoxical and inconsistent history of the FBI-congressional relationship. Scholars’ focus primarily rested upon the expansion of the executive branch at the time of the Bureau’s founding, minimizing Congress’s role in shaping Bureau activities.

The Progressive era, which saw the creation of the Bureau, significantly witnessed the expansion of the powers of the executive branch, often at the expense of Congress. Authority moved from state and local governments into federal hands. Members of Congress, however, did act to maintain their long-standing authority. Members argued that increasing executive power threatened states’ rights and, even more sinisterly, the equality of the three branches of government. Leading congressmen argued that should Congress slip into the background, the representative nature of American democracy would be lost. To prevent this trend, members of Congress applied the Constitution’s two most effective means for controlling the executive branch: their ability to investigate the actions of the executive branch and, more important, to appropriate the money required to fund that branch. Over the course of the twentieth century, however, members of Congress slowly loosened their resort to these critical powers. Some endorsed quicker actions in an increasingly fast-paced world. Others sought political gain by fostering an environment of suspicion and fear. Instead of closely monitoring how FBI

officials exercised power, members of Congress became willing, if unknowing, accomplices in these officials' actions.

There are complex reasons behind Congress's unwillingness to pursue effective oversight of the Federal Bureau of Investigation. Most important was a willingness to defer to Bureau officials. Whenever Congress uncovered problems, many members felt that corrections were best left to executive officials and any illegalities were the result of overzealous agents and were best corrected by Bureau officials. In the wake of the Palmer Raids of 1919-1920, Congressional committees did investigate the Bureau's trampling of civil rights. Eventually, however, they endorsed Attorney General Stone's reforms, that the abuses were not systemic and could be prevented by more effective control from within the Bureau and the Justice Department. Similarly, in the 1970s, when the Church and Pike committees in Congress uncovered the incredible number of intelligence agency illegalities, members of the legislative branch once again concluded that the problems were the product of President Nixon's unique personality and style. To these members, Nixon's resignation resolved the problem. Members of Congress, in effect, limited their oversight role to illuminating any discovered problem. Continual oversight became unnecessary as, for the most part, executive branch officials could be trusted to control their agencies. Only in aberrant situations did Congress act to change the culture within the executive branch.

Members of Congress also faced difficulties inherent in the structure of Congress when attempting oversight of the executive branch. The deliberative nature of congressional hearings and floor debates ensured slow and limited actions. Any problems involving the Federal Bureau of Investigation could not be quickly addressed by

members of Congress, owing to the committee system based on seniority and the ideological differences among the members. Even after hearings were conducted and reports written, opposition members of Congress could block potential legislation. For example, several committees in Congress held hearings about wiretapping on an almost annual basis throughout the post-World War II period. Not until the late-1960s, however, did Congress enact meaningful wiretapping legislation. However, during the period 1924-1968, because Bureau officials and the White House felt this to be an invaluable technique, wiretaps had been authorized by executive directives despite provisions of the 1934 Communications Act and court rulings. For over thirty years, then, Congressional inactivity in legalizing wiretapping allowed Bureau officials to create their own rules.

Similar Congressional inactivity came in the wake of the Palmer Raids of January 1920. In the early 1920s, Congress conducted several hearings about the civil-rights abuses perpetrated by Bureau officials, but never enacted legislation to limit Bureau political surveillance. Instead, members of Congress debated procedure. While the deliberative nature of congressional discussions certainly has its place, effective oversight becomes impossible when members of Congress cannot agree on the source and nature of the problem of FBI abuses. A unified Congress could limit Bureau activity. A Congress, divided by partisanship and ideology, often failed to perform its oversight function. Even as late as 1975, Congressional partisanship and ideological anti-communism doomed the recommendations of the Church and Pike committees. The final report of the Pike Committee was never released to the House of Representatives while the various recommendations of the Church Committee were watered down and ultimately abandoned. Bureau officials were able effectively to exploit the middle ground between

these partisan and ideological fights, and, as a result, were able for the most part to protect their autonomy.

Members of Congress' unwillingness to limit Bureau activities reflected their blind trust in Director Hoover as the paragon protecting the nation from subversive threats. Because of this trust, members of Congress approved increased Bureau appropriations without hesitation. Limiting the Bureau's funds could slow its growth. Nonetheless, as in the case of their oversight responsibilities, members of Congress willingly approved increases in the Bureau's appropriations, believing that a strong Bureau protected the nation and fulfilled the demands of their constituents. Dating from the mid-1930s, Bureau officials could count on the public's blind trust in FBI Director Hoover's leadership. Leading members of Congress hesitated to challenge Bureau operations. Over time, "Hoover's appearances before the House Appropriations Committee...[became] extremely gala affairs. Committee members used each occasion to lavish praise on the Director, to expedite his appropriation requests, and to secure from public disclosure any information about FBI activities that conflicted with the FBI's carefully manufactured public image."<sup>3</sup> Rather than closely scrutinizing the Bureau's uses of appropriated funds, and consequently questioning how those dollars had been used, members of Congress treated the FBI Director like royalty. Confident that he would never be stringently questioned by members of Congress, Hoover was willing to do anything he felt necessary to promote his personal agenda, whether openly or clandestinely.

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<sup>3</sup> Athan Theoharis and John Stuart Cox, *The Boss: J. Edgar Hoover and the Great American Inquisition* (Philadelphia: Temple University Press, 1988), 213.

The long-term relationship between Congress and the Federal Bureau of Investigation can therefore be classified as limited. Over the years, and particularly during the Cold War era, Bureau officials did not feel compelled to give Congress complete information, and Congress rarely asked for it. On the few occasions when members of Congress sought to control the actions of Bureau officials, they were strung along by Congressional debate and inaction, hampered by the positive image of the Bureau held by their constituents, and haunted by fears that attacking Bureau officials could lead to questions about their own political and personal lives. In an environment dominated by an increasingly powerful executive branch, members of Congress, in effect, let Bureau officials write their own rules. When those rules were broken, and first fully exposed by Congressional investigations of the mid-1970s, Congress did not then enact effective legislation. During the height of the Cold War, members of Congress willingly abandoned their oversight powers out of a sense of devotion to national security. In effect, they operated under the belief, expressed by Attorney General Bonaparte in 1908, that the most effective oversight of the Bureau came from within the Department of Justice. Even when it became clear in the mid-1970s that executive oversight had proven to be inadequate, members of Congress hesitated to exercise their constitutional prerogative. Consequently, Bureau officials acted with impunity, effectively negating oversight from all sides.

Studies of the Federal Bureau of Investigation have largely centered on a few themes. The most common has been the personality and actions of the long-time director, J. Edgar Hoover.<sup>4</sup> These books argued that the activities of the Bureau reflected the

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<sup>4</sup> Two such examples are Theoharis and Cox and Curt Gentry, *J. Edgar Hoover: The Man and the Secrets* (New York: W.W. Norton and Company, 1991).

mindset of its leader. In their estimation, the Bureau played a significant role in the growing anti-communist hysteria in the mid-twentieth century because of Hoover's personal opinions. It was his belief that "a strong FBI was needed to safeguard the nation's security from the threat of subversion at home" and it was "Hoover's philosophic and emotional antipathy toward radical dissent [that] provided the main impetus to FBI surveillance priorities."<sup>5</sup> No other element within American government could be trusted. Both Congresses and presidents come and go, and "only the bureaucracy itself is enduring, and that it is the true foundation of the government."<sup>6</sup> While these studies provide insight into the activities of the Bureau, they only partially cover the relationships Hoover created in order to maintain his control. For most authors, the key relationship was between head officials in the executive branch, such as presidents and attorneys general, and Hoover's Bureau.

Because of its placement within the executive branch, scholars have spent most of their time examining the Federal Bureau of Investigation's relationship with officials within that branch. For example, Theoharis argued the abuses of the FBI after 1936 were "the direct result of the transformation of the office of the presidency and of the attendant centralization of power in the federal bureaucracy."<sup>7</sup> Similarly, Regin Schmidt argued, in her work on early Bureau political intelligence, that the Bureau's connection to the White House "was not a product solely of the New Deal or the 'Imperial Presidency' but began as early as 1921 and was used continually since by the executive in times of social unrest, domestic criticism, or foreign crisis." This relationship was created, in her view, because

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<sup>5</sup> Theoharis and Cox, 6, 8.

<sup>6</sup> Gentry, 63.

<sup>7</sup> Athan Theoharis, *Spying on Americans: Political Surveillance from Hoover to the Huston Plan* (Philadelphia: Temple University Press, 1978), xiii.

of the growth of the power of the federal government begun in the Progressive era.<sup>8</sup> Accordingly, the expansion of Bureau power coincided with the increasing power of the federal government generally, but the presidency specifically. Any relationship with Congress, therefore, was coincidental and of secondary importance.

A few scholars have studied the relationship between the FBI and certain elements within Congress, usually in a Cold-War context. They argue that the anti-communist consensus reached by Americans in the wake of World War II was caused by Bureau officials who were eager to educate Americans about the dangers of subversion, and simultaneously saw Bureau appropriations increase. Members of Congress latched onto that consensus for its political popularity, sparking a profitable relationship with like-minded Bureau officials. Both sides benefited. Bureau officials could leak information to educate the public while members of Congress could be viewed by the voting public as defenders of American values. For example, Kenneth O'Reilly's study of the Bureau's aid to the House Un-American Activities Committee concluded that the Cold War would have developed with or without the FBI, but that "its domestic fallout...would have been far different if FBI officials had not worked to nurture an anticommunist consensus by underwriting such McCarthyites as the junior Senator from Wisconsin and HUAC."<sup>9</sup> Christopher Gerard echoed those findings with his work on Bureau officials' relationship with the Senate Internal Security Subcommittee. Hoover used this committee because they were a "dependable ally in his efforts to protect the

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<sup>8</sup> Regin Schmidt, *Red Scare: FBI and the Origins of Anticommunism in the United States* (Copenhagen: Museum Tusculanum Press, 2000), 20.

<sup>9</sup> Kenneth O'Reilly, *Hoover and the Un-Americans: The FBI, HUAC, and the Red Menace* (Philadelphia: Temple University Press, 1983), 7.

nation from the perceived dangers of communism.”<sup>10</sup> While examining this relationship, however, Gerard never asked what oversight role Congress should have when dealing with the FBI. Instead, he focused on the lack of executive oversight because “neither the Justice Department nor the White House questioned the Bureau’s authority” to collect the political intelligence it delivered to the Senate subcommittee.<sup>11</sup> Gerard never questioned the role the Senate subcommittee should have played in asking about the material it was receiving from Bureau officials. An important element was overlooked.

Even more thorough examinations of the Bureau’s relationship with Congress tend to focus solely on particular eras, especially the Red Scare of 1919-1920 and the Cold War. In her study of the Red Scare, Regin Schmidt argued that the Department of Justice had to overcome obstacles in Congress in order to fund the Bureau’s political activities.<sup>12</sup> Once those obstacles had been cleared, however, Congress began to accept Bureau activities “partly because it accepted political surveillance as long as it was used against marginal groups, and partly because, as a result of the centralization of power in the executive branch, it deferred to the president and the Attorney General.”<sup>13</sup> Because of the Progressive era’s desire for increased centralization, members of Congress lost power to the federal bureaucracy. Consequently, that bureaucracy could begin to dominate its relationship to the branch in charge of appropriations and oversight.

Most often, the relationship between Congress and the FBI is placed into a Cold-War context. As Hoover’s power grew, he worked “to contain any challenge to his authority.” As Theoharis and Cox argued, he accomplished this by enlisting “the support

<sup>10</sup> Christopher Gerard, “A Program of Cooperation”: The FBI, the Senate Internal Security Subcommittee, and the Communist Issue, 1950-1956,” Ph.D. diss., Marquette University, 1993, ii.

<sup>11</sup> Gerard, iv.

<sup>12</sup> Schmidt, 158.

<sup>13</sup> Ibid., 364-365.

of fellow conservatives in Congress. For Hoover, Congress could be a potential problem (given its oversight and appropriation powers) or a helpful ally.<sup>14</sup> In order to ensure it was the latter, Hoover “devised an efficient congressional liaison program.... Contacts were to be maintained with key congressional staff aides and sympathetic congressmen, and Hoover was to be briefed on all matters of interest. This program began informally and in time evolved into a highly professional operation.”<sup>15</sup> The purposes of this program were two-fold. First, it allowed Hoover to know which members of Congress supported the director and which could cause problems. With that information, Hoover could then use Congress as a “primary mechanism for disseminating Bureau information.”<sup>16</sup> While this program certainly benefited both sides during the Cold War, questions remain about the relationship during other periods. The Cold War could have been an exceptional era when the political goals of Bureau officials and some members of Congress aligned. Scholars have not examined this relationship in the long-term. By focusing solely on the oversight responsibilities of the executive branch, opportunities either missed or wasted by Congress to control Bureau misdeeds have been overlooked. In order to fully understand the legislative branch’s role in the growth of the Federal Bureau of Investigation, this study examined a longer term. With such a long view, Congressional inaction becomes less a product of a certain public mindset and more of a gradual weakening in relationship to the executive branch.

One critical difficulty to understanding the relationship between the United States Congress and the Federal Bureau of Investigation emanates from the scarcity of sources available from both sides. Unlike papers in the executive branch, the records created by

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<sup>14</sup> Theoharis and Cox, 212.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid., 215.

members of Congress remain their personal property. Members, therefore, keep documents they find important, discard those they do not, and deposit them at various institutions throughout the country. For researchers, several problems arise. The first is the member may not have kept the information critical to the questions being asked. It becomes impossible to know for certain if a congressman received information about a particular subject. Educated guesses may be made, but definitive proof is difficult to acquire. The second difficulty is the number of Congressmen and Senators who served on committees related to Bureau activities. Besides the appropriations committees of both the House of Representatives and the Senate, research into the files of members of the judiciary committees and government oversight committees would also be useful. With no guarantee that any of these members kept relevant records, the researcher's task becomes more daunting.

While researching members of Congress is certainly difficult, the problems associated with any study of the Federal Bureau of Investigation have been well documented.<sup>17</sup> The relationship between Congress and the Bureau “is strewn with fraudulent denials, phony paper records, and—something Lewis Carroll would have loved—’Do Not File’ files.”<sup>18</sup> To navigate these twists and turns would require much more information than the Bureau currently provides. Even with the requirements of the Freedom of Information Act (FOIA), receiving records from the Bureau is a long, costly, and difficult process. For this study, the author made two FOIA requests. The first was for the Bureau’s files on the House Appropriations Committee. To date, about one third

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<sup>17</sup> For example, see Athan Theoharis, “In-House Cover-up: Researching FBI Files,” *Beyond the Hiss Case: The FBI, Congress, and the Cold War*, ed. Athan Theoharis (Philadelphia: Temple University Press, 1982): 20-77.

<sup>18</sup> O'Reilly, xi.

of this request has been received. Using that third, however, illustrated another problem in researching Bureau files. When processing FOIA requests, Bureau records managers will only release those files specifically requested, even if related files exist. Once I received the first pages of the released House Appropriations Committee file, it became evident another request would be necessary. This request dealt with the Surveys and Investigations Staff created for the Appropriations Committee using loaned Bureau agents. While the information about the creation of this staff was contained in the Bureau's House Appropriations Committee files, it is conceivable that the Bureau created distinct files relating to their agents' activities for the committee. Until those files are released, it is impossible to know what information they contain.

Even when released, Bureau files are often incomplete. In researching his book on the Bureau's relationship with the House Un-American Activities Committee, Kenneth O'Reilly noted he needed "complete access not only to the HUAC file, but to the files of those FBI informers who appeared before the Committee and, as well, the individual case files of those who were named Communists, fellow travelers, Stalinist stooges, or whatever. Informant files, however, are generally inaccessible under the FOIA, and the Bureau's files on individual HUAC witnesses would no doubt total more than one million—perhaps several million—pages."<sup>19</sup> In his case, any attempt at understanding the full nature of the relationship was impossible. Even if the names of informants were released, which is rare because of the personal privacy exception to FOIA rules, the costs associated with acquiring their files would be enormous. For this dissertation, which deals with multiple committees over a longer period, the obstacles were larger.

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<sup>19</sup> Ibid., x-xi.

Because of these difficulties in obtaining access to relevant Bureau files, this dissertation does not address one critical aspect of the relationship between Congress and the FBI. Because “Congress could be a potential problem (given its oversight and appropriation powers) or a helpful ally,” Hoover worked to ensure it was the latter by devising “an efficient congressional liaison program.” The goal of this program was to maintain contact with “key congressional staff aides and sympathetic congressmen.”<sup>20</sup> Over time, Hoover ordered his aides to compile “dossiers on every member of Congress and every congressional candidate.” Should members of Congress ask about this, the FBI Director was able to technically deny that the FBI kept files on members of Congress. He ensured this with the creation of “summary memoranda” and not individual case files and by maintaining these “memoranda” separately from the FBI’s central records system. Once a memorandum was compiled, any information in the Bureau’s central files used in its creation was destroyed. Since these memoranda were not “files,” Hoover could truthfully deny that the FBI had any files on members of Congress. While this program began informally in the 1920s, it was eventually systematized in the 1950s. Maintained separately from the FBI’s central records, under lock and key, access to the memoranda was confined to senior officials.<sup>21</sup>

Destroying such politically sensitive memoranda, without public knowledge, could be achieved easily because of these secretive filing procedures. It is impossible, therefore, to truly understand the extent of Bureau officials’ surveillance of members of Congress. It was only in 1972 that Acting Director L. Patrick Gray discontinued the program because it was “not essential to FBI operations.” He also felt such a program

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<sup>20</sup> Theoharis and Cox, 212.

<sup>21</sup> Ibid., 213-214.

“can be misinterpreted easily as a program to investigate Congressmen and Congressional candidates.”<sup>22</sup> When Senator Sam Ervin asked about the program, Gray claimed that its purpose “was to provide briefing material for FBI officials who might desire it before calling on newly elected Congressmen and Senators.” Gray put his Bureau’s reputation on the line, telling Ervin that “the FBI’s record, I believe, leaves no doubt that it has been in the forefront of protecting individual freedoms rather than trying to encroach upon them.”<sup>23</sup> Gray reiterated that “no investigation was conducted to secure this information, and no investigative file was opened either in the field offices or at FBI headquarters.” (emphasis in original) Instead, this “biographical information” had been derived from newspapers, campaign literature and city directories and augmented by any information about the potential congressman already in Bureau files (such as if the person had been a subject, victim, or witness of a previous investigation or had submitted information to the Bureau voluntarily). In sum, FBI agents had not conducted an investigation of the member of Congress but had, instead, merely compiled information from various sources. And, in the case when a candidate was victorious, the summarized information was kept in the Bureau’s central files. If the candidate had lost, the memorandum was destroyed.<sup>24</sup> While some had portrayed them as “secret files,” Gray told Ervin that “no one of us in the FBI ever considered that the summary memorandum... constituted a secret file or a political dossier.”<sup>25</sup> Gray, at first, orally ordered the termination of the program; it is not clear that this was done, however. Even when Bureau officials hoped to use a particular member of Congress as an ally, the

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<sup>22</sup> Federal Bureau of Investigation Press Release, 27 October 1972.

<sup>23</sup> L. Patrick Gray to Senator Sam J. Ervin, Jr., 12 January 1973, L. Patrick Gray III FBI File. I would like to thank Ivan Greenberg for providing copies of these portions of Gray’s file.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

information contained in these summary memoranda are generally unavailable, if they exist at all. If a member of Congress opposed certain Bureau actions, it is certain their memorandum contained much more damning information, at least in terms of improper actions taken by Bureau officials.

One such member of Congress was Vito Marcantonio, a representative from East Harlem in New York City and a member of the American Labor Party. Portions of his file have been released under FOIA, much of which was information that could have been discovered from public documents.<sup>26</sup> Much of the data in Marcantonio's files was supplied by informants, whose reliability is impossible to ascertain. Unverified claims were included in the file, which was created because many had "reported that through the years Marcantonio constantly has vilified and ridiculed the Department of Justice and the Federal Bureau of Investigation in line with various smear campaigns of the Communist Party."<sup>27</sup> Because of his anti-Bureau views, Marcantonio was targeted for surveillance and was included in the FBI's World War II Custodial Detention Index. Other members of Congress undoubtedly received similar treatment.

The existence of Marcantonio's file apparently is exceptional. Because such files had been kept separate from the FBI's central records, they could readily have been destroyed, as had been Acting Director Gray's intent in 1972. The scarcity of such files precludes this study from fully understanding the relationship between individual members of Congress and the Bureau. Whether enemies or allies, released Bureau files on members have either been heavily redacted or non-existent. This has meant that this study has not uncovered the full extent of the relationship between the Bureau and

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<sup>26</sup> Gerald Meyer, "The FBI's Surveillance of Congressman Vito Marcantonio," *Political Affairs Magazine*, <http://www.politicalaffairs.net/article/articleview/9322> (2 August 2010).

<sup>27</sup> Ibid.

Congress. The principal focus has centered on those occasions when Congress could have exercised its oversight and appropriations powers. Congress ultimately failed to meet its responsibilities, leaving the Bureau to be subject to the whims and political concerns of the executive branch, to presidents and attorneys general more than willing to let Bureau officials choose their own path.

## Chapter 1

### The Bureau's Beginnings: 1907-1914

The Federal Bureau of Investigation had humble beginnings. Created by order of Attorney General Charles Bonaparte on June 29, 1908, the Department of Justice's investigative division consisted of about twenty-two men, nine of whom were former Secret Service agents. This bureau also had, from its beginning, a contentious and complex relationship with the United States Congress. Congress held power over the Department of Justice in two ways. It appropriated every dollar of the Department's budget, and it could convene oversight hearings into the Department's actions. In this early period, Congress used these powers to control both the growth and the scope of the Bureau of Investigation. Wary of the creation of a secret police, members of Congress felt the American people "may not be in sympathy with the modern idea that the administration of justice is inherently and always dependent upon a spy system."<sup>1</sup> Attorney General Bonaparte's orders creating the Bureau of Investigation, combined with the Progressive presidency of Theodore Roosevelt and his desire to centralize power in the executive at a time when members of Congress were equally concerned with its place in government, brought these tensions to the fore. In both his earlier demand for the funds to create an investigative force and in justification for his order, Bonaparte cited such an independent agency's efficiency and cost-effectiveness. He argued the prevailing system, under which the Department of Justice relied upon Secret Service agents temporarily hired from the Treasury Department for needed investigations, did not allow for enough personal supervision. This led to both inefficiency and higher costs. Members of

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<sup>1</sup> Hearings before Subcommittee of House Committee on Appropriations, *Sundry Civil Appropriation Bill for 1910* (Washington, D.C.: United States Government Printing Office, 1909), 1032.

Congress, however, saw the potential for abuse in such a system and sought ways to limit the activities of the detective force. They discussed both the need to limit the areas such an agency could investigate through legislation and to maintain a limited appropriation so the detective service could not grow beyond congressional control. In the end, however, Bonaparte convinced Congress that his oversight, based upon reading a daily summary of the agents' reports, would suffice to preclude suspected abuses of power. Instead, Bonaparte urged Congress to exercise vigilance and utilize its system of hearings only after any sort of illegality had occurred.

This loose oversight was almost immediately challenged, however, through the enactment of federal laws expanding the new Bureau's responsibilities. Members of Congress asked Bonaparte if his request for secret service agents was "due to the different character of offenses that we have made crimes in recent years." Bonaparte responded, "undoubtedly, and the number of Federal crimes is enormously increasing and the tendency is that they will increase all the time."<sup>2</sup> Such an expansion occurred as early as 1910, with the passage of the White Slave Traffic (Mann) Act. Instead of anti-trust and banking investigations, the Department of Justice now began to investigate the private acts of citizens, moving it into the murkier waters of morality. Leading members of Congress rigorously debated the need for this act on the basis of states' rights. Once that hurdle was overcome, no questions were asked about the Department of Justice's handling of such cases. The tremendous growth in federal cases this new law created overwhelmed the small detective force and, as well, the attorney general's ability to process agents' daily reports. The daily oversight that Attorney General Bonaparte had

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<sup>2</sup> Hearings before Subcommittee of House Committee on Appropriations, *Sundry Civil Appropriation Bill for 1909* (Washington, D.C.: United States Government Printing Office, 1908), 777.

promised in 1909 would protect the nation from a secret police was lost forever. The seeds of the Bureau's future relationship with Congress were planted here. In succeeding years, Congress continuously increased the federal government's jurisdiction, and did so oftentimes without proper oversight. As the Bureau of Investigation grew, ironically Congressional oversight became infrequent and cursory. Then, with the onset of World War I abroad, and the fears associated with that conflict, Congress willingly discarded its oversight responsibility in the name of protecting the nation. This theme would recur time and time again.

While the position of attorney general was created in 1789, the initial duties were limited to advising the president and to present the government's cases before the Supreme Court. The Department of Justice was not created until 1870 and, just as had been the case with the attorney general, had limited initial responsibilities. Members of Congress worried such a department could invade personal liberties and bring the federal government into the states in never-before-seen ways. It was not until the late 1880s that the Department's responsibilities grew, as Congress began passing more federal laws, especially dealing with interstate commerce. Many conservative Republican and southern Democratic members of Congress felt uneasy about this expansion of federal power, though for different reasons. While conservative Republicans feared an expanded federal government threatened individual rights and liberties, southern Democrats, who did support anti-trust legislation and federal regulation of businesses, feared a strong federal government because it threatened states' rights. Attorney General Bonaparte faced this strong concern when proposing his own investigative department. Members of Congress were uneasy about such an investigative branch, as shown in the early stages of the

debate. Instead of elevating the Secret Service into the position of an investigative bureau for the entire executive branch, members of Congress ensured that service would be strictly limited to the Department of Treasury. By spreading investigative responsibilities throughout the executive branch, the federal government's powers were less threatening. The ironic consequences of this decision, however, was the creation of an investigative bureau within the Department of Justice that eventually fulfilled all of Congress's initial fears.

Beginning with his annual report of 1907, Attorney General Charles Bonaparte requested that Congress fund the Department's own detective force. He maintained that "a Department of Justice with no force of permanent police in any form under its control" could not effectively complete its work.<sup>3</sup> Congress, under the leadership of the House Appropriations Committee, twice refused to appropriate extra funds for such a force. This refusal, according to FBI historian John Fox, was due to Congress's desire to maintain "the balance of power between the executive and legislative branches, not hyperbolic fears of a police state."<sup>4</sup> Other scholars, most notably the early Bureau historian Max Lowenthal, counter that Congress abhorred a national detective service as "contradictory to the democratic principles of government."<sup>5</sup> Later scholars, including Fred Cook and Athan Theoharis, agree that Congress's fear of a "secret police" guided their efforts when refusing to appropriate funds for such a group in the Department of Justice. While conceding Bonaparte acted legally, they argue he contravened the spirit of Congress

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<sup>3</sup> Charles Bonaparte, *Annual Report of the Attorney-General of the United States for the Year 1907* (Washington, D.C.: United States Government Printing Office, 1907), 10.

<sup>4</sup> John F. Fox, "The Birth of the Federal Bureau of Investigation," July 2003. On-line. Available at <http://www.fbi.gov/libref/historic/history/artspies/artspies.htm>.

<sup>5</sup> Max Lowenthal, *The Federal Bureau of Investigation* (New York: William Sloane Associates, Inc., 1950), 4.

when unilaterally creating the Bureau.<sup>6</sup> In order to understand the history of Congress's relationship with the Bureau, the understudied aspect of its inception must be examined.

At the height of America's Progressive movement, the presidency of Theodore Roosevelt and the rise of executive power certainly brought about the creation of a powerful executive-branch bureau. Members of Congress at the time feared the creation of a police state, a concern which also lay in the perceived imbalance that Roosevelt's powerful stance caused in the relationship between the legislative and executive branches. Progressive cries for efficiency and centralized management were countered by fears that such centralization would lead to a "spy system." At the time of the creation of the Bureau, then, the expansion of the executive branch at the expense of the legislative was sharply contested by both sides. Congress refused to acquiesce at this stage. As American jurisprudence became more complex throughout the twentieth century, however, Congress deferred to the executive. The difficult questions which needed to be asked, at either appropriations or oversight hearings, were set aside as the executive branch became more powerful.

Beginning with his annual report for fiscal year 1907, Charles Bonaparte called Congress's attention to the fact that the Department of Justice did not have its own detective force. In line with the Progressive movement championed by President Theodore Roosevelt, Bonaparte defended central executive control over such a force as ensuring efficiency and as cost-effective. As he saw it, the current policy wherein the Justice Department relied on the Treasury Department was "woefully inadequate and no longer fulfilled the department's more rigorous investigative requirements. Because of

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<sup>6</sup> Fred J. Cook, *The FBI Nobody Knows* (New York: The MacMillan Company, 1964), 51; Theoharis and Cox, 43.

the steadily increasing caseload and the complexity of the anti-trust and banking laws, many important cases would not receive the attention they deserved.”<sup>7</sup> The tenets of the Progressive movement, championed by President Roosevelt, brought the United States Government into new areas of law enforcement. With the passage of the Sherman Anti-Trust Act in 1890, and the sharp rise in anti-trust cases which followed during Roosevelt’s presidency, the Department of Justice could no longer keep up with the necessary investigations. Instead of having to rely on United States Marshals or the Treasury Department’s Secret Service agents, Bonaparte argued that if the Department of Justice “had a small, carefully selected, and experienced force under its immediate orders, the necessity [of using these other officers]…might be sometimes avoided with greater likelihood of economy and a better assurance of satisfactory results.”<sup>8</sup> Bonaparte believed he could sway Congressional leaders by arguing for greater efficiency and economy. He made sure to inform members of Congress that Congress could determine the duties and scope of such an agency through legislation.<sup>9</sup> While the existing system worked well enough, Bonaparte argued, his department needed its own force to fulfill its obligations. He extolled the importance of such a force, stating unequivocally that “it seems obvious that the Department on which not only the President, but the courts of the United States must call first to secure the enforcement of the laws, ought to have the means of enforcement subject to its own call; a Department of Justice with no force of permanent police in any form under its control is assuredly not fully equipped for its

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<sup>7</sup> David Joseph Williams, “‘Without Understanding’: The FBI and Political Surveillance, 1908-1941,” Ph.D. diss., University of New Hampshire, 1981, 30.

<sup>8</sup> Charles Bonaparte, “Annual Report for the Attorney-General of the United States for the Year 1907,” 10.

<sup>9</sup> Ibid.

work.”<sup>10</sup> Bonaparte made his intentions clear: he desired to control his own body of detectives for efficiency and cost control at the same time that Congress could dictate the duties of those detectives. Unwilling to push such a force on a leery nation, Bonaparte did all he could to convince Congress to move the project along. While Bonaparte certainly pursued this bureau as part of the Progressive ideal of efficiency and expert management, he hesitated to act hastily. He had to be sensitive to Congressional concerns.

In his testimony before a House Appropriations Subcommittee on January 17, 1908, Bonaparte reiterated proposed establishment of a departmental detective force, again employing the language of economy and efficiency. He told the subcommittee members that “it would tend to more satisfactory administration and also to economy if instead of being obliged to call upon [the Secret Service] for this service we had a small, a very moderate, service of that kind ourselves. I think the best plan would be to have a service of that kind under the control of the Department of Justice and let it, if necessary, assist other departments in cases of emergency.”<sup>11</sup> Bonaparte conceded the need for caution in the employment of these men because, as one congressman put it, “they are not always a high type of man.”<sup>12</sup> Here, again, Bonaparte argued for efficiency. If he were empowered to hire his own detectives, especially those with some prior experience with the Treasury Department, his own force would run much more smoothly. Reflecting this view, a June 30 letter to Bonaparte, United States Attorney Henry Stimson argued that the men recruited for this new bureau had to be of an “exceptionally high type” and the Department of Justice could not “do the work at too low a price” if they wanted “the best

<sup>10</sup> Ibid.

<sup>11</sup> Hearings before Subcommittee of House Committee on Appropriations, *Deficiency Appropriations for 1908 and Prior Years*, Urgent Deficiency Hearings (Washington, D.C.: United States Government Printing Office, 1908), 202.

<sup>12</sup>Ibid., 203.

men.”<sup>13</sup> Stimson echoed Bonaparte’s assertion that untrained investigators or private detectives could not be relied on, in the latter case, a group Congress had already forbidden the executive branch to use. Bonaparte’s testimony before this subcommittee began the debate within Congress about the propriety of a departmental police force.

In a subsequent appropriations hearing of April 1908, Bonaparte again stressed his claim that the Department of Justice’s detective force would ensure efficiency and economy. In these hearings for the 1909 Sundry Civil Appropriation Bill, Bonaparte argued that “there is no question that it would tend to a more satisfactory administration if the Department of Justice had a small force under its own direct control.”<sup>14</sup> In response to a question of why the Attorney General could not continue to call upon members of the Secret Service, Bonaparte argued “that it compels our Department to rely for certain duties, and also duties of a somewhat delicate and confidential character, upon employees that we have not direct control over, and we can not discipline them as we could if they were directly attached to the Department.”<sup>15</sup> Even when congressmen raised the possibilities of abuse inherent in such a detective force, Bonaparte reiterated his efficiency claims, arguing his department was “obliged to have people who will investigate and report on the facts attendant on crimes or suspected crimes, and the protection of the community makes it very desirable that you should have as efficient a force as you can.”<sup>16</sup>

House members were wary about the desirability of creating such a detective force, and were equally wary about the continued use of Secret Service agents. As

<sup>13</sup> Stimson to Bonaparte, 30 June 1908, Department of Justice (Record Group 60), Case File 44-3-11-3 Section 1, National Archives and Records Administration, College Park, Maryland.

<sup>14</sup> *Sundry Civil Appropriation Bill for 1909*, 774.

<sup>15</sup> *Ibid.*, 774-5.

<sup>16</sup> *Ibid.*, 779.

Theoharis argued, Congressional leaders were “reflecting the strong states’ rights and libertarian sentiments of an earlier day... [and] justified their actions as essential to safeguard representative government and prevent the evolution of ’a Federal secret police.’”<sup>17</sup> Congressman Smith, when asking Bonaparte about the use of the Secret Service, questioned whether Bonaparte felt “that the policy of Congress...was an evidence of the hostility to what might be called a spy system.”<sup>18</sup> Bonaparte returned to his argument about the necessity for such a force to create efficiency and cost effectiveness and as well emphasized this need as partly due to the changing nature of crime. He argued “that crime is all the time becoming less and less local in character” and the current system of detection could not keep up.<sup>19</sup> Answering Congressman Sherley’s concerns about the potential for abuse, Bonaparte argued that he could keep a closer eye on detectives who reported to him, and not the Chief of the Secret Service. In his lengthiest discussion of the problems inherent in using Secret Service agents, Bonaparte told members of the Committee that “the difficulty is that in dealing with this situation it is necessary to have a force of [a secret-service type] character to secure evidence against criminals and to enforce the laws. If there is a provision for its organization under that Department which is responsible for it, the Department can be held to an accountability for abuses that occur, and all the matters connected with it can be subject to the inspection and control, first, by the head of the Department and through him by Congress.”<sup>20</sup> Without an independent force, he went on, he would be “obliged to make temporary appointments of agents either by calling them ’special deputy marshals’ for the

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<sup>17</sup> Theoharis and Cox, *The Boss*, 43.

<sup>18</sup> *Sundry Civil Appropriation Bill for 1909*, 776.

<sup>19</sup> *Ibid.*, 777.

<sup>20</sup> *Ibid.*, 778-779.

time being or by some other designation, who will endeavor to do the same work, but will not do it as well, and moreover will not be subject to the same discipline.”<sup>21</sup> Finally, Bonaparte reiterated the growing complexity of crime in the United States, arguing that “the growth of the country is such and the enormous increase in facilities of communication and the, so to speak, ‘cosmopolitization’ of crime...is such that you are compelled now to have a central agency to deal with it.”<sup>22</sup> He returned to his earlier recommendation, advising members of the committee that they “must put in the hands of the Department of Justice the opportunity to employ a certain number of men for this purpose.” To answer their concerns about a spy system, Bonaparte once again argued that efficiency would protect the people from suspected abuses. He told the members of the Committee that “what you have said about the spy system applies rather to the method of doing the work than to the work itself. We are obliged to have people who will investigate and report on the facts attendant on crimes or suspected crimes, and the protection of the community makes it very desirable that you should have as efficient a force as you can.”<sup>23</sup>

Congressman Sherley returned to the question of spying, arguing “it does not strike some of us as being in accord with the American ideas of government to undertake, by a system of spying on men and prying into what would ordinarily be designated as their private affairs, to determine whether or not a crime has been committed and to make the efficiency of a Department dependent not so much upon the presentation in an orderly and legal way of a case properly brought as upon the nosings of the secret-service men. There seems to be a growing tendency to look to the employment of special agents whose

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<sup>21</sup> Ibid., 779

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

chief attribute is their ability to spy.”<sup>24</sup> Bonaparte responded to this point by arguing that “if you have a man who is permanently employed in a Department and whose retention depends on his faithful discharge of his duty, and not on the fact of his making work for himself, then you avoid whatever there is of evil in the suggestion you mention.”<sup>25</sup> Bonaparte skillfully maneuvered Congressman Sherley’s concern about spying into a question of proper management. Properly oversight by an observant supervisor would obviate any improper investigations. This was precisely Bonaparte’s complaint about the current situation: he could not effectively oversee the Secret Service men because they did not report to him. Once he commanded a departmental force, the problem of answering to multiple heads would disappear. In his final statements about the alleged threat of a secret service, Bonaparte responded to Congressman Smith’s question about the general revulsion of “our race” toward “a general system of espionage...being conducted by the General Government” by saying that “anyone who is troubled with that apprehension, I think, can dismiss it from his mind as far as the Department of Justice is concerned.”<sup>26</sup> Bonaparte’s of the need for a detective’s bureau in the Department of Justice did not convince those skeptical Congressmen. Instead of acceding to the attorney general’s request for the appropriations necessary to establish such a force, the House Appropriations Subcommittee cut off Bonaparte’s ability to use Secret Service agents, reestablishing Congress’s right to appropriate funds restricting the Secret Service solely to investigate counterfeiting and to protect the President. Even more critically, the Secret Service could now never become the investigative bureau for the entire executive branch, limiting that branch’s power.

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., 780.

After the conclusion of these appropriations hearings in early 1908, members of Congress debated whether Secret Service agents could legally be used for investigations outside of counterfeiting and protecting the president. While Bonaparte had argued for the creation of an investigations force within the Department of Justice, members of Congress pushed this suggestion aside and instead debated the technically illegal use of Secret Service agents by other departments. In this way, then, congressmen did not fully discuss the Attorney General's proposition and made no direct comment upon it. They apparently believed that their taking action against the centralization of investigatory power within the Secret Service would cause Bonaparte to see the writing on the wall. This debate highlighted Congressional fears of the consequences of a centralized detective force, the Secret Service, an agency which already existed. By expressing their concerns, members of Congress hoped they had ended any future attempt to create such a centralized force.

The chairman of the subcommittee of the House Appropriations Committee, Republican Congressman James A. Tawney of Minnesota, led this charge against the other departments' continued use of Secret Service agents, including by the Department of Justice. His committee inserted a clause in the 1909 Sundry Civil Appropriation Act, ratified in May 1908, which made it illegal for other government departments to request Secret Service agents to perform investigations. Tawney described the purpose of this clause as "to emphasize our disapproval of the practice of using the Secret Service, which is the most important branch of the secret-service work in the Government and which is limited exclusively to the detection of counterfeiting...and the protection of the...President. It was for the purpose of stopping the use of this Service in every

possible way by the Departments of the Government that this provision was inserted.”<sup>27</sup>

In his analysis, Tawney contended that this would, in fact, save the government money.

He argued that the Treasury Department had “no right and [could not] justify the practice which has obtained here for the last few years of maintaining a larger force than is necessary for the secret-service work in the Treasury Department in order to supply men in other Departments when their employment in other Departments is deemed necessary.”<sup>28</sup> While Tawney conceded that other departments inevitably might require detectives, such detectives should be temporarily hired from the Secret Service’s waiting list, and not from the Secret Service itself, and should then be removed from government service when the investigation concluded. In his assessment, only the Treasury Department ought to have a permanent detective force as all other departments would only need temporary detectives.<sup>29</sup> Another Republican, Representative Walter Smith of Iowa, maintained that Congress had already spoken when limiting Secret Service investigations to counterfeiting and protecting the President. “All [the Appropriations] committee is asking,” he told his colleagues, “is that the expressed and declared purpose of Congress existing for a quarter of a century shall be obeyed by this division of the Secret Service.”<sup>30</sup> By keeping a larger roll than necessary in order to fulfill the requests of other departments, the Secret Service had violated the appropriations act, at least in spirit. Returning to this argument of Congressional will, Smith reinforced the view of the importance of Congress’s status. Executive agencies could not continue to flaunt Congressional restrictions without facing the consequences. Some Congressmen argued

<sup>27</sup> U.S. House, *Congressional Record* v. 42 (60<sup>th</sup> Cong., 1<sup>st</sup> sess.: 2 Dec. 1907-30 May 1908): 5554.

<sup>28</sup> *Ibid.*, 5555.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, 5557.

about the broader implications of government detectives, articulating fears about the adverse consequences of establishing a spy system in the federal government.

Congressional fears appeared decidedly warranted, in light of recent revelations involving the use of Secret Service agents against members of Congress indicted in a land-fraud scandal as recently as the 1890s. This use remained a fresh wound to the legislature's independence.

Another member of Tawney's subcommittee, Democratic Congressman Swagar Sherley of Kentucky, particularly cited the potential abuses of detectives. He asked his fellow congressmen "what private conduct of an officer or employee of the Government should be investigated" by that government. Sherley became even more specific, asking "if the accusation was made against a Member of Congress that he had been guilty of conduct unbecoming a gentleman and a Member of Congress that a Department would be warranted in investigating his conduct by a secret-service man?"<sup>31</sup> When the response came that only conduct which affected a government official's official capacity could be investigated, Sherley caustically replied, "That is a statement that does not mean anything. What does the gentleman consider should be the class of conduct, and who is to be the judge of whether it affects him in his public or private capacity?"<sup>32</sup> Representative James Fitzgerald of New York seconded Sherley's comments. He observed that "there has been an effort once or twice to create a general police system under the Federal Government," and that "those who have given any attention to this matter know that there have been gross abuses growing out of the use of the men in the Secret Service by the

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<sup>31</sup> Ibid., 5556.

<sup>32</sup> Ibid.

various Departments of the Government.”<sup>33</sup> Another New York representative, Bennet, adopted the opposite position, however, and argued that any such restriction should be opposed.

Representative Bennet argued that using Secret Service agents assured that other federal departments would have access to quality investigators. Instead of hiring “men with whose training and antecedents they are absolutely unfamiliar,” these departments “can go to this Secret Service Bureau, where they have the best trained men in the United States; men who have done splendid work; men who know about crime, and take them for a day or two, pay them out of their appropriation, and then let them go back to their own employment.” This was “such a small item,” he concluded, but one that kept “the integrity of the proceedings of the different Departments, or absolutely protects the proceedings of different Departments of the Government.”<sup>34</sup> Bennet’s stance reflected the Progressive tenet of efficiency. By using the best-trained agents for their work, other government departments would avoid lengthy and costly investigations. Should the spirit of the law be broken, this was a small price to pay.

Another congressional supporter of this Progressive position, Representative Driscoll, similarly argued that a centralized detective bureau would be more efficient. “There should not be a secret-service bureau in each Department,” he assured his colleagues, “any more than there should be a Government printing office in each Department. It is economical, it is businesslike, and it is symmetrical to keep them together.... It tends toward economy; it tends toward keeping together the things that have

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<sup>33</sup> Ibid., 5558.

<sup>34</sup> Ibid.

been discovered in this work.”<sup>35</sup> According to Driscoll, a centralized agency that could lend agents throughout the government worked most efficiently to conduct such required work. The fears such an agency could abuse power would be offset by their professionalism and cost-effectiveness.

Representative Sherley remained unconvinced by Bennet’s and Driscoll’s position. These departments, he argued, did not need as many investigators as they claimed and, furthermore, by going against Congress’s expressed wishes, the executive branch had been acting in bad faith. He questioned Bennet’s premise “that it is necessary for the Departments to have secret-service men. I am not quite prepared to admit that proposition...[but] if it be true that they need...to have secret-service men, they should come to Congress and get authorization by Congress for the employment of this class of men.” Returning to his fear of the threat inherent in the creation of a secret police, Sherley stated he did “not believe this country has reached a point where it needs that sort of supervision over men’s conduct by Government, and by secret-service methods.... Let the Departments come openly. They have been evading the plain spirit of the law and they know it.... It is treating Congress and its laws with absolute contempt, and I desire to voice my protest against this attempt of the Departments to determine what is necessary and legal, rather than to let the lawmaking part of the Government make that determination.”<sup>36</sup> Sherley affirmed the principle that Congress was equal with the executive. Congress’s duty to pass legislation could not be usurped by an overzealous executive department. If departments needed investigators, they should directly approach

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

Congress for the necessary funding. Since the practice of lending Secret Service agents went against congressional mandates, Congress had every right to enforce its will.

While this debate over other departments' use of Secret Service agents was heated, the eventual outcome of amending the appropriations bill was not. The amendment easily passed the House, with the result that the Secret Service could no longer lend its agents to other departments. While the Senate's version of the appropriations bill originally lacked this clause, House members insisted on its inclusion in the combined bill with the result that the Sundry Civil Appropriations Act for 1909 was sent to the President. Unwilling to jeopardize funding for necessary programs over this clause, Roosevelt signed the act into law.<sup>37</sup>

In his annual message to Congress, President Roosevelt bitterly denounced the new rules binding Secret Service agents to the Treasury Department, impugning the motives of members of Congress. Roosevelt described the congressional action as "of benefit only, to the criminal classes. If deliberately introduced for the purpose of diminishing the effectiveness of war against crime it could not have been better devised to this end."<sup>38</sup> Roosevelt went further, however, contending, "The chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by Secret Service men," a remark that impugned the motives of those Congressmen who had supported the amendment.<sup>39</sup> Members of Congress subsequently focused on the President's accusation that their action was intended to protect criminals in their midst. The ensuing debate lay the foundation for questions about the propriety of a centralized

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<sup>37</sup> The information about the path the bill took to President Roosevelt comes from John F. Fox, "The Birth of the Federal Bureau of Investigation," July 2003. On-line. Available at <http://www.fbi.gov/libref/historic/history/artspies/artspies.htm>.

<sup>38</sup> *Congressional Record* v. 43 (60<sup>th</sup> Cong., 2d sess.: 7 Dec 1908-4 March 1909), 24.

<sup>39</sup> *Ibid.*, 25.

police system and the fears that many in Congress held about the legislature's changing place within the government. The questions Congress had asked Bonaparte in the appropriations hearings would be raised again and again as Congressmen looked to balance the government's need for criminal investigations with the public's right to be free from spying.

Key congressional leaders denounced President Roosevelt's annual message, charging that he had "impugned the integrity of individual representatives who had opposed the agent-lending policies [of the Treasury Department]."<sup>40</sup> The House leadership immediately called for a resolution showing their displeasure at the President's choice of words. Congressman Bailey of Texas argued, "The President of the United States was not careful of the feelings of Congress" and was "totally at a loss to understand how this body or [the Senate] can receive a message of that kind and make no protest."<sup>41</sup> Similar statements were made in the Senate with Senators McLaurin and Bacon arguing the need for "the utmost harmony between all of the departments of the Government.... There can be no harmony between these three departments if there is a courtesy shown by any one department to any other department.... The Senate can not afford to follow such a vicious example. It can only treat it with silent contempt."<sup>42</sup> Senator Bacon, in what was the most succinct condemnation of the President's message, termed it "the most deliberate, the most carefully designed, and the most skillfully worded insult that was ever sent to any parliamentary body by an executive officer, either in this country, or in any other country."<sup>43</sup> The House quickly responded to the

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<sup>40</sup> Williams, "'Without Understanding,'" 39.

<sup>41</sup> *Congressional Record* v. 43, 312.

<sup>42</sup> *Ibid.*, 315.

<sup>43</sup> *Ibid.*

President's message by approving a resolution demanding that Roosevelt transmit any evidence upon which his message was based, and to transmit any evidence connecting any member of the House with corrupt actions in his official capacity. As Congressman Denby stated, "The purport of the resolution is that the House itself must be the judge of the propriety or impropriety of the language of communications addressed to it, and must act accordingly. So much a branch of the Government, coordinate and coequal with all other branches, must insist upon; and when the House of Representatives receives a communication couched in unfitting terms, and that communication is neither withdrawn nor explained nor atoned for, it becomes the duty of the House to decline to consider such communication, from whatever source it may come."<sup>44</sup>

President Roosevelt responded quickly to this House resolution, arguing that "a careful reading of [my] message will show that I said nothing to warrant the statement that 'the majority of Congressmen were in fear of being investigated by the secret service men,' or 'that Congress as a whole was actuated by that motive.'"<sup>45</sup> He then turned to the *Congressional Record*'s recording of the debate to bolster his case. Personalizing his message, President Roosevelt returned to the argument of efficiency, stating, "Mr. Tawney of Minnesota, Mr. Smith of Iowa, Mr. Sherley of Kentucky, and Mr. Fitzgerald of New York, appear in this debate as the special champions of the provision referred to. Messrs. Parsons, Bennet, and Prescott were the leaders of those who opposed the adoption of the amendment and upheld the right of the Government to use the most efficient means possible in order to detect criminals and to prevent and punish crime."<sup>46</sup> The amendment passed, although the individual votes of congressmen were not recorded;

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<sup>44</sup>Ibid., 646-647.

<sup>45</sup>Ibid., 459.

<sup>46</sup>Ibid.

Roosevelt conceded that the passage "was greeted with applause." Roosevelt inserted the caveat that "many Members who have no particular knowledge of the point at issue are content simply to follow the lead of the committee which had considered the matter, and I have no doubt that many Members of the House simply followed the lead of Messrs. Tawney and Smith, without having the opportunity to know very much as to the rights and wrongs of the question."<sup>47</sup>

The President continued by claiming that "two distinct lines of argument were followed in the debate. One concerned the question of whether the law warranted the employment of the secret service in departments other than the Treasury, and this did not touch the merits of the service in the least. The other line of argument went to the merits of the service, whether lawfully or unlawfully employed, and here the chief...argument used was that the service should be cut down and restricted because its members had 'shadowed' or investigated members of Congress...."<sup>48</sup> For the first line, Roosevelt recognized that "most of what was urged in favor of the amendment took the form of the simple statement that the [Appropriations] Committee held that there had been a 'violation of law' by the use of the Secret Service for other purposes than suppressing counterfeiting...and that such language was now to be used as would especially prevent all such 'violation of law' hereafter."<sup>49</sup> Roosevelt concluded that "there was both by implication and direct statement the assertion that it was the law, and ought to be the law, that the Secret Service should only be used to suppress counterfeiting; and that the law should be made more rigid than ever in this respect."<sup>50</sup> In this regard, Roosevelt claimed

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 459-460.

<sup>50</sup> Ibid., 460.

the Appropriations Committee did not disapprove of secret-service work in general, but only that Treasury Department agents were used improperly by other departments. Roosevelt's concession did not see this as an argument for or against the provision. The Appropriations Committee's members had merely questioned the legality of lending Secret Service agents outside of the Treasury.

The only statements to favor limiting the use of Secret Service agents, according to Roosevelt, came from Congressman Sherley, who constantly referred to Secret Service investigations of Members of Congress.<sup>51</sup> Because it seemed Sherley's comments protected criminal members of Congress, Roosevelt felt justified in claiming that Congress had acted to protect itself and, by implication, criminals everywhere. The real issue, Roosevelt stated was simply, "Does Congress desire that the Government shall have at its disposal the most efficient instrument for the detection of criminals and the prevention and punishment of crime or does it not? The action of the House last May was emphatically an action against the interest of justice and against the interest of law-abiding people and in its effect of benefit only to lawbreakers. I am not now dealing with motives; whatever may be the motive that induced the action of which I speak, this was beyond all question the effect of that action."<sup>52</sup> Congressmen Tawney and Smith had not heeded presidential concerns, as stated in his letter to the Speaker that protested the cutting of appropriations of the Interstate Commerce Commission. In that letter, Roosevelt had advised the Speaker that "the provision about the employment of the secret service men will work very great damage to the Government in its endeavor to prevent and punish crime. There is no more foolish outcry than this against 'spies': only criminals

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

*need fear our detectives.”*<sup>53</sup> The provision could not be vetoed, as it had been incorporated in the Sundry Civil Appropriations Bill. A veto would have jeopardized the funding for several executive agencies, something Roosevelt could not afford. Arguing that the House leadership knew this, Roosevelt claimed his only recourse was “discussing it in my message to Congress; and as all efforts to secure what I regard as proper treatment of the subject without recourse to plain speaking had failed, I have spoken plainly and directly, and have set forth the facts in explicit terms.”<sup>54</sup> His original message to Congress, in other words, was the only way Roosevelt could convey his disapproval of the loss of Secret Service agents among the several executive departments. This loss, according to Roosevelt, would be catastrophic.

As Roosevelt surveyed the history of the Secret Service’s actions against crime, he took pride in their accomplishments in uncovering “a far-reaching and widespread system of fraudulent transactions involving both the illegal acquisition and the illegal fencing of Government land.” Highlighting the riskiness of these investigations, and obliquely referring to past investigations uncovering land fraud by Oregon congressmen, Roosevelt noted that “some of the persons involved in these violations were of great wealth and of wide political and social influence. Both their corporate associations and their employees made the investigations not only difficult but dangerous.”<sup>55</sup> In these cases the evidence had been obtained by men trained by the Secret Service and detailed to the Department of Justice, and “no more striking instance can be imagined of the desirability of having a central corps of skilled investigating agents who can at any time be assigned, if necessary in large numbers, to investigate some violation of the Federal

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid., 461.

<sup>55</sup> Ibid.

statutes, no matter what branch of public service.”<sup>56</sup> Roosevelt praised a centralized investigatory agency as the only efficient way to solve such cases. This efficiency, Roosevelt conceded, could become problematic as “the more efficient an instrument is, the more dangerous it is if misused.”<sup>57</sup> It was here that a vigilant Congress was needed, as it “should hold itself ready at any and all times to investigate the executive departments whenever there is reason to believe that any such instance of abuse has occurred. I wish to emphasize my more than cordial acquiescence in the view that this is not only the right of Congress, but emphatically its duty. To use the Secret Service in the investigation of purely private political matters would be a gross abuse.”<sup>58</sup> Congress should oversee the actions of the Secret Service, but it should not close any avenues of investigation. To do so, according to Roosevelt, would imperil the American people and benefit only criminals. Concluding, Roosevelt urged Congress to remove the restriction on departmental uses of the Secret Service, and instead place the Secret Service within the Department of Justice.<sup>59</sup> By transforming the Secret Service into a centralized investigatory agency that could be used by any executive department, Roosevelt was following his emphasis on the importance of efficiency and executive control. House members, however, were unwilling to part with their prerogative, and the ensuing debate focusing on Roosevelt’s remarks returned to questions of the separation of powers and the Appropriations Committee’s original intent.

When answering the President’s charges, those representatives whom Roosevelt labeled as the leaders took to the floor to express their concerns and reaffirm their reasons

<sup>56</sup> Ibid.

<sup>57</sup> Ibid., 462.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

for supporting the restriction. The first to speak was Tawney, the chair of the House Appropriations Committee. Rising to loud and long-continued applause, Tawney began by stating that “the continued success and perpetuity of government depend more upon the confidence of the people in integrity, honor, and unselfish patriotism of those charged with the duty and responsibility of government than upon any other condition.”<sup>60</sup> He argued further that “nothing can contribute so much to the destruction of this great essential of government or to the disintegration of our Republic as an attempt upon the part of one branch of the Government to impeach the honor and integrity of another branch.”<sup>61</sup> This “arbitrary…use of the great power of any one of the branches of our Government in this respect, if allowed to pass unchallenged, will go further to undermine the confidence of the people in their Government than all other agencies combined. Undermine the confidence of the people in any one of the three coordinate branches of Government and you have done more to destroy the foundation upon which that Government rests than could be accomplished in any other way.”<sup>62</sup> Because of Roosevelt’s attack, Tawney continued, the people and the press had begun to question Congress’s motive, and he felt obligated to respond. Tawney did so by returning to the consequences of the provision itself.

Because the President’s interpretation of the provision’s effects was not based on facts, Tawney argued, Roosevelt’s message conveyed to the American people the wrong impression of Congress. Tawney asked his colleagues, “Has [the provision], as claimed, restricted the authority of any department of the Government to employ secret-service men for the investigation of fraud and the detection and punishment of crime? Has it

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<sup>60</sup> Ibid., 660.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

taken from any department of the Government any appropriation or money theretofore available for the payment of compensation and expenses of those employed in this service?”<sup>63</sup> Returning to the text of the provision, a provision “approved by the President without objection several days before the adjournment of the last session of Congress,” Tawney claimed it provided only “that there shall be no detail from the Secret Service Division of the Treasury Department and no transfer therefrom.”<sup>64</sup> The President, in his letter, failed to make this distinction clear. The provision did nothing to “abridge the authority of any department of the Government to employ secret-service men.”<sup>65</sup> The restriction prohibited the use of Treasury Department agents by other departments, not investigatory agents generally. This being the case, Tawney asked, why was the President so critical? Tawney’s answer was that “the Chief of the Secret Service Division of the Treasury Department no longer controls the secret-service men theretofore detailed from his division to the other departments of the Government and no longer fixes the compensation which these other departments pay for that service. The effect of this law has been to take away from him the power which he theretofore exercised over the secret-service men or detectives employed by other departments, both as to service and compensation.”<sup>66</sup> To prove this assertion, Tawney quoted Wilkie, the Secret Service Chief, who told a Boston newspaper, “the only thing the fathers of the prohibitive law accomplished was an additional expense to the treasury.”<sup>67</sup> According to Tawney, Wilkie’s power derived from his ability to lend investigators, and he would stop at nothing to maintain that power.

<sup>63</sup> Ibid., 661.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid, 662.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

To demonstrate the Appropriations Committee's sincere purpose when crafting the provision to bar Secret Service agents from other executive departments, Tawney showcased Bonaparte's testimony about how he had used Treasury agents. Since department heads, including Attorney General Bonaparte, had testified that they did not oversee the Treasury agents they had used in their investigations, Tawney cited this as the only reason the President could object to this provision. Tawney responded to the administration's centralization argument with his own contention that such consolidation was dangerous. Congressman Sherley, the next to speak, returned the conversation to the fear of "spies" and the importance of the separate branches of government.

After dissecting the President's analysis of his prior statements, Congressman Sherley returned to his "real" argument: "A secret service force had inherently in it the possibilities of abuse."<sup>68</sup> Congress purposefully inserted the decades-old provision that the Secret Service be used "for no other purpose whatsoever" and that provision was being violated. As a result, Sherley argued, "The tendency of the departments was to use means that they thought proper to carry out their purposes, without regard to the opinion of the lawmaking body. My experience in Congress had from day to day confirmed this conviction, and so I urged that this plain and flagrant violation of the law should be stopped."<sup>69</sup> Sherley denied that he feared secret service investigations of Congress but rather objected to a disregard for the expressed will of Congress. If the President was truly concerned about the detection and prosecution of crimes, his ire towards Congress was misplaced. Congress had, in fact, appropriated more funds for such purposes than ever before; the President's message, according to Sherley, meant "that the President

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<sup>68</sup> Ibid., 671.

<sup>69</sup> Ibid.

considers that a secret service department of government is not only an absolute necessity, but that the efficiency of its service is so great as to warrant its creation without restriction to its use, trusting to the Executive to prevent abuse, and if such occurs, punishing unsparingly those guilty of the abuse.”<sup>70</sup> Sherley instead claimed the President’s real motive behind his annual message to Congress was to centralize power. Taking a wider view of the situation, Sherley warned, “I recall no instance where a government perished because of the absence of a secret service force, but many there are that perished as a result of the spy system. If Anglo-Saxon civilization stands for anything, it is for a government where the humblest citizen is safeguarded against the secret activities of the executive of the government. It stands as a protest against a government of men and for a government of law.”<sup>71</sup> If his true desire was to protect the nation from criminals, the President could not justifiably argue that Congress had been miserly in appropriating funds or allowing for the use of detectives generally. Congress, Sherley maintained, was merely restating its expressed will to ban the use of Secret Service agents by departments other than the Treasury. Concluding his remarks, Sherley returned to the matter of civil rights in the face of an overzealous executive. Congress’s motives regarding the secret service, he reiterated, was intended to represent “the individual citizen of the country.” Congress would “heretofore guard with jealous care the sacred rights of those citizens, and hedge about such service with all the safeguards essential to the preservation of the people’s liberties. Whatever may have been the wisdom of Congress, I glory in the fact that it was this motive that activated the House in

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

the performance of its duty when legislating against a spy system.”<sup>72</sup> Sherley clearly defined the issue as one wherein Congress was protecting citizens’ rights against a Roosevelt administration that was attempting to refashion the executive branch’s position relative to the legislative. An observant, attentive Congress had the responsibility to deflect the Progressive administration’s attempts to centralize power if the people were to be protected. Sherley concluded by assuring his fellow representatives that “the President considers that a secret service department of government is not only an absolute necessity, but that the efficiency of its service is so great as to warrant its creation without restriction as to its use, trusting to the Executive to prevent abuse, and if such occurs, punishing unsparingly those guilty of the abuse.... I, on the contrary, believe it to be so dangerous an instrument as to warrant its creation for the use of an Executive only when it is so circumscribed as to prevent as far as possible its abuse.”<sup>73</sup> Congressman Sherley clearly articulated the vastly different views of President Roosevelt and the Congress on growing executive power. Sherley intended to curtail such executive growth by exercising Congress’s legislative authority.

The next congressman singled out by the President, Smith, also rose to explain Congress’s motives. He began by conceding, “We ought to be able to agree that some detective force is necessary in the enforcement of the criminal laws; and that, on the other hand, in a free country, no general system of spying upon and espionage of the people, such as has prevailed in Russia, in France under the empire, and at one time in Ireland, should be allowed to grow up.... The question now is not should a legal detective force be created in the Department of Justice, but was Congress subject to just criticism for

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

destroying at its last session the system which had grown up of using the counterfeiting force in the Treasury Department for miscellaneous purposes.”<sup>74</sup> The problem did not involve the use of detectives, Smith argued. Members of Congress feared “a central police or spy system in the Federal Government.” Going further, Smith pointed out that “every department has been and now is given ample funds and authority to procure evidence and to detect criminals. If the criminals are not unearthed, it is not due to the provision about which the President complains, but it is due entirely to the inefficiency of his administration.”<sup>75</sup> Smith’s purpose in countering the President’s charges was to show the true reasoning behind Congress’s actions. Members of Congress were not afraid of investigations by secret service men, but feared centralized power in the executive. This new provision merely reinforced this long-held fear, expressed in the original appropriations language for the Secret Service. The conflict, then, revolved around Roosevelt’s desires to expand executive power and Congress’s intent to reinforce its coequal status.

The President’s defenders, who had originally opposed the provision, soon joined the floor debate. Some, like Congressman Bennet of New York, argued that Congress’s actions had created greater expense and inefficiency.<sup>76</sup> Another defender, Congressman Driscoll, was more circumspect in his statements. While acknowledging that “a man who is a detective, whose profession is to discover crime and hunt down criminals, can not be a man of high moral ideals; that he can not be a strictly truthful man at all times and under all circumstances,” Driscoll affirmed that Secret Service men “are able, skilled, and trained detectives.... They are fit men for the work they undertake and for the service for

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<sup>74</sup> Ibid., 672.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid., 3125.

which they are paid.”<sup>77</sup> To underutilize such a force would be wasteful, while confining these men to investigating counterfeiting and protecting the President would limit their usefulness. Driscoll also extolled the efficiency that centralization would bring, observing that “there should be a general detective or secret-service division in the Government, where all facts discovered with reference to the persons and matters may be gathered together for future reference and for assistance when crimes are committed; and when it appears that felonies are committed in any department, or in any bureau, those skilled, trained, and professional detectives should be detailed to investigate those cases to discover the perpetrators of such crimes, and, if possible, bring them to punishment.”<sup>78</sup> Another Congressman argued that “honest men ought not to dread an investigation; they ought rather to invite it; and dishonest men, no matter where they are found, ought to be investigated, exposed, and prosecuted for violations of the law, no matter what their standing in a social way, no matter what their positions in a political way. Crime should be run down and punished whenever and wherever it exists, and the Government should be free with all its agencies to accomplish this end.”<sup>79</sup> A more powerful executive branch was needed to prosecute criminals. Other Congressmen offered differing opinions. Raising the matter of expanded executive power, Congressman Cook of Colorado stated that “as a Member of the United States Congress and a coequal in power with the executive department under the provisions of the Constitution, I claim and assert the right to defend my citizen constituents and myself from the encroachments and abuse of the executive power of the present national administration.”<sup>80</sup>

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<sup>77</sup> Ibid., 3129.

<sup>78</sup> Ibid., 3130.

<sup>79</sup> Ibid., 3133.

<sup>80</sup> Ibid., 3130.

The debate in Congress, therefore, revolved around the question of Congress's role in criminal justice and jurisprudence. At this point, a majority jealously guarded Congress's coequal status with the executive, intended to prevent the President from becoming too powerful. Tawney concluded this debate by pointing out that the Chief of the Secret Service was "the man who started this campaign [to get rid of the limitation]; he is the man who has carried on this campaign against the Congress of the United States for restricting his activities...in order to show his contempt for the Congress of the United States because of its having assumed to interfere with his activities in building up a large and powerful Secret Service Bureau."<sup>81</sup> Tawney then read a letter from Chief Wilkie as "proof that last June, if not before, the Chief of the Secret Service conceived the idea that he could secure a modification or a repeal of this limitation, the law which has restricted his activities in the matter of building up a large central secret-service bureau under no limitations, under no restrictions, and responsible to nobody but himself."<sup>82</sup> While members of Congress and the President had gone back and forth over the potential advantages and disadvantages of a centralized detective force within the federal government, Attorney General Bonaparte was denied what had been the usual source for investigators.

Bonaparte was in effect caught in a bind. He had no force of his own and could no longer rely upon the Treasury Department's agents. He had already sought Congress's approval for his own force, but, ironically, had come away with less than he had before. Therefore, during Congress's summer recess in 1908, Bonaparte circulated a memorandum through the Department of Justice directing that all non-banking and

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<sup>81</sup> Ibid., 3134-3135.

<sup>82</sup> Ibid., 3135.

immigration investigations should be referred to the Chief Examiner and his force. In a letter to President Roosevelt justifying his actions, Bonaparte argued, “A strict, direct and personal control by the Attorney General over the detective force employed by the Department is indispensable to the efficiency and economy of the force and a necessary safeguard against abuses and scandals, of which there is always a danger as a result of the employment of [professional] detective agencies.”<sup>83</sup> After outlining how Congress’s recent actions had forced his hand, Bonaparte extolled the importance of his having direct oversight of such a force and explained why the Attorney General should properly provide such oversight.

Bonaparte’s unilateral decision to create this detective force would necessitate that he would have to justify his action not only to the President but also to Congress. Should Congress act to oppose such a creation, it could easily terminate it by denying the necessary appropriations. Bonaparte, therefore, had to tread lightly and anticipate that he would have to convince Congress of the importance and necessity of his action. In his annual report to Congress for fiscal year 1908, Bonaparte defended this decision, claiming that “through the prohibition of its further use of the secret service force, contained in the sundry civil appropriation act, approved May 27, 1908, it became necessary for the department to organize a small force of special agents of its own.”<sup>84</sup> “Such action,” he continued, “was involuntary on the part of this department.”<sup>85</sup> Seeking to assuage Congressional fears of a secret police, Bonaparte listed the steps that the attorney general would take, and assured Congress that the attorney general would

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<sup>83</sup> Attorney-General Charles Bonaparte to President Roosevelt, 14 January 1909 (Department of Justice File, 44-3-11-Sub 3, 12/5/08-4/6/09).

<sup>84</sup> *Annual Report of the Attorney-General of the United States for the year 1908*, (Washington, D.C.: United States Government Printing Office, 1908), 7.

<sup>85</sup> *Annual Report of the Attorney-General of the United States for the year 1908*, 7.

always be aware of what the investigators were doing. He specifically cited his receipt of daily summaries of agents' reports from the chief examiner and, therefore, "the Attorney-General knows, or ought to know, at all times what they are doing and at what cost. Under these circumstances he may be justly held responsible for the efficiency and economy of the service rendered." Bonaparte concluded his report by arguing that "such a force is, under modern conditions, absolutely indispensable to the proper discharge of the duties of this department, and it is hoped that its merits will be augmented and its attendant expense reduced by further experience."<sup>86</sup> Continuing with his Progressive rationale for cost-effective, efficient executive management, Bonaparte specifically attempted to assure Congress that the attorney general would always know what his investigators were doing. Such knowledge would theoretically preclude any investigations from spilling over into the private lives of citizens. Should such illegalities occur, Bonaparte emphasized Congress could hold the attorney general accountable.

Because Bonaparte had created an independent investigatory bureau during a Congressional recess, Congress's first opportunity to discuss his actions occurred later in 1908, after the conclusion of that year's congressional and presidential elections. At this point Congress initiated a debate over the desirability and consequences of a centralized Secret Service Bureau, as described above. Leading members of Congress made their fears known about the adverse consequences of such a centralized investigatory agency, with one arguing that "no general system of spying upon and espionage of the people...should be allowed to grow up."<sup>87</sup> At the same time, however, Congress also directly debated the merits of Bonaparte's decision to create a Justice Department

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<sup>86</sup> Ibid.

<sup>87</sup> *Congressional Record* v. 43, 671.

investigatory body. Members of Congress expressed no reservations about this development, with some, in fact, lauding Attorney General Bonaparte's efforts as in keeping with Congressional desires. Bonaparte's creation of a departmental detective bureau had actually spread power among several executive agencies, namely the Departments of Treasury and Justice. Bonaparte seemingly had created this agency along the lines that Congress had earlier demanded. Americans would not be subject to a centralized spy system while Congress could continue to check any expansion in executive power.

At the same time members of Congress debated the President's message about the Secret Service, they also addressed Bonaparte's action. Congressman Tawney claimed that Bonaparte intended to gain control over his Department's investigations, as opposed to allowing Secret Service Chief Wilkie continue to oversee the men that were lent to the Justice Department.<sup>88</sup> Turning to Bonaparte's creation, Tawney observed, "The Department of Justice at least has suffered no inconvenience and has not been restricted in the least in the matter of the employment and compensation of...special agents."<sup>89</sup> In further rebuttal to the President's claims, Tawney concluded that "the facts conclusively prove that the activities of no department of the Government have been in the least restricted or affected by the provision, for every department of the Government possess the same authority to-day it possessed before the enactment of this provision to employ that service and has more money available for the payment of that service now than it has ever had."<sup>90</sup> For the President to claim that Congress had acted solely to benefit criminals, Tawney concluded, was, in fact, incorrect. Every department retained the right

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<sup>88</sup> Ibid., 662.

<sup>89</sup> Ibid., 663.

<sup>90</sup> Ibid., 662.

hire investigators and could pay them from their own appropriations. Congress had merely limited the use of Secret Service agents to investigations of counterfeiting and protecting the President. As another Representative put it, Congress had given enough money to enable executive agencies to detect and prosecute criminals, but “if the criminals are not unearthed, it is not due to the provision about which the President complains, but it is due entirely to the inefficiency of his administration.”<sup>91</sup>

A similar debate occurred in the Senate, with Senators lauding Bonaparte’s creation as the proper way for executive departments to conduct investigations. Senator Hemenway, a member of the Senate Committee on Appropriations, assured his colleagues that “if the amendment to the sundry civil bill for the current year 1909 has operated as a restriction upon the use of the employees of the Secret Service Division of the Treasury Department, such restriction is so technical and limited in character that it does not appear sufficient to warrant the impugning of the motives of Congress in adopting the amendment. No Congress in the history of the Government has so liberally supported the executive branch of the Government by appropriations to aid in the execution of law as has the Sixtieth Congress.”<sup>92</sup> In fact, the Senate Committee on Appropriations endorsed Bonaparte’s decision, affirming that, with the exception of a small force of agents in the Treasury Department, “the Department of Justice is the proper place for the employment of secret-service agents, as it is the department to which finally all violations of the law must be reported and which must conduct the prosecutions and trials.”<sup>93</sup> The Committee further noted that, since the Department of Justice had to prosecute all federal crimes, it needed its own investigatory force.

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<sup>91</sup> Ibid., 678.

<sup>92</sup> Ibid., 2183.

<sup>93</sup> Ibid.

Bonaparte's creation meant that Justice "now has a secret service force of its own which will no doubt be increased as future needs demand it."<sup>94</sup> Not only did Senators find such an agency proper, they endorsed any centralized investigatory body as rightfully belonging in the Department of Justice. Furthermore, they also foresaw an inevitable need to increase funding such a group. Their sole critique involved keeping such a force in the Treasury Department as "very unwise" because it would "result in much conflict and friction between various departments."<sup>95</sup> As viewed by the Senate Committee on Appropriations, Congress had never intended to "build up a spy system" within the Treasury Department, but provided sufficient funds for a Department of Justice investigatory bureau. Any centralization, which the members of the Senate still feared, should occur under the Attorney General's supervision in order to minimize potential abuses. Concluding, Senator Hemenway assured his colleagues that "the Department of Justice...has been provided with a secret-service force of its own, and now has 40 men engaged on that work, and has power and funds to increase that force.... So no one can claim...that the Department of Justice has been hampered in ferreting out crime."<sup>96</sup> For the President to argue, therefore, that Congress had acted to protect criminals in its midst by passing this provision would be wrong. Congress appropriated more funds than ever to investigate and prosecute crime; the sole concern was to guard against a dangerous centralization within the Treasury Department.

Other Congressmen, however, were not convinced by this argument. One Roosevelt supporter, Congressman Bennet, argued that creation of the Department of Justice's force would cost the American public more money. "This limitation," he

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., 2191.

argued, “takes from every department the right to use men that have been trained in the Secret Service. It has resulted in the building of a new force in the Department of Justice, which has increased the detective force of this country to the extent of 18 men, at an annual expense...of \$36,000 a year, and, as the Attorney-General says, with a present decrease in efficiency.”<sup>97</sup> At its most basic point, Bennet argued, the Department of Justice would increase the number of detectives on the public payroll, an unjustified expense since more qualified men were available from the Secret Service. The debate soon ended, with Congressman Tawney returning to discuss the worthiness of the Attorney General’s actions.

Tawney cited the Attorney General’s testimony in support of continuing to limit the use of Secret Service agents to investigations of counterfeiting and protecting the President. Tawney further pointed out that “the Attorney-General...told [the House Appropriations] committee in substance that under this provision, or that under the existing conditions, he was administering this branch of the service more satisfactorily than heretofore. And why? He has established a secret service in his department, known as ’special agents.’” In his testimony, the Attorney General had explained why this arrangement was more satisfactory since Secret Service agents transferred to his department never reported to him, but to the Chief of the Secret Service, who also fixed their compensation. In the end, Bonaparte never knew what these men were doing. With his own force, however, the Attorney General would be more aware of ongoing investigations and fully understood where money was expended.<sup>98</sup> To these members of Congress, this was preferable to a centralized Secret Service bureau that worked

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<sup>97</sup> Ibid., 3125.

<sup>98</sup> Ibid., 3134.

throughout the government. Not only would investigations occur in that department which controlled prosecutions, but also the Attorney General would have direct oversight of the agents and could curtail any possible abuses.

Attorney General Bonaparte's next opportunity to discuss his creation of a new bureau came in February 1909, at hearings before the House Appropriations Committee. Here, again, Bonaparte was questioned about his actions but with members taking a positive tone toward his reasoning. For example, Congressman Smith remarked to Bonaparte that "while you stated in your [annual] report this year, in effect...that you were compelled to organize a force, you were only compelled to do what you had twice recommended to Congress?" Bonaparte agreed, stating that he had recommended funding such a force under his "detection and prevention of crime" appropriation.<sup>99</sup> Going further, Smith asked if Bonaparte "thought the better plan was to have the express authority of Congress, but you thought the force should be organized in your department?" Bonaparte again agreed, adding that he only acted out of necessity because he could no longer use Secret Service agents.<sup>100</sup> The committee then returned to the executives' claims of efficiency, and they pointedly questioned Bonaparte about his original contention that a departmental investigatory body would be more cost effective. Chairman Tawney asked, "As now organized is this force as efficient as it was formerly or prior to the time you organized it, when you were employing the secret-service agents of the Treasury Department?" Bonaparte conceded, "I do not think its members are generally as experienced as the members of the secret-service force. I think they are fairly efficient men, and on the whole the work is done as well as I think it could reasonably be expected

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<sup>99</sup> Hearings before Subcommittee of House Committee on Appropriations, *Sundry Civil Appropriation Bill for 1910* (Washington, D.C.: United States Government Printing Office, 1909), 1006.

<sup>100</sup> *Ibid.*, 1007.

under the circumstances.” When asked if his recruited agents came directly from Treasury, Bonaparte responded that, of the original nine he took from Treasury, only six remained. “Have they become less efficient because they have performed their services under your department,” Congressman Fitzgerald asked? “On the contrary,” responded Bonaparte, “I think these six are more efficient. I think that we did not get, as I felt sure would be the case, the ideal men of the secret-service force.”<sup>101</sup> With their questions about efficiency satisfactorily answered, committee members then asked the Attorney General about his reasoning. Recalling his testimony a year before, Bonaparte reiterated his desire for more personal control over investigations.

Congressman Fitzgerald recalled Bonaparte’s testimony from a year prior: “While you did not want to criticise [sic] in any way [the Secret Service’s] work, you were under the conviction that for your department it was more desirable that you should have absolute control of the men doing your work.”<sup>102</sup> Bonaparte acknowledged that this, indeed, was his desire. He then explained how he would exercise this control worked by requiring every agent to make daily reports to the chief examiner, who would then summarize them for the Attorney General. This system, Bonaparte continued, “enables the Attorney-General—of course it is a good deal of a bore to read these things all over—but nevertheless, it enables the Attorney-General to understand what this force of special agents is doing all the time, and if there is any cause of complaint to Congress or somebody else, the President can call him to account for what has been done. Moreover, he is able to know whether or not the appropriation intrusted [sic] to him is spent in a

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<sup>101</sup> Ibid., 1010.

<sup>102</sup> Ibid., 1012.

proper way.”<sup>103</sup> With this in mind, Congressman Sherley then asked Bonaparte about what protections would be instituted to stop such abuses. This questioning laid the groundwork for the questions that were raised about the Bureau of Investigation throughout the pre-World War I era.

During his February 1909 testimony, members of the House Appropriations Committee forced Attorney General Bonaparte to explain how the public would be protected from his new detective bureau. Congressman Sherley, who, for the previous two years had pointedly questioned Roosevelt’s expansion of executive power, consistently asked whether the executive could really be trusted with “an instrument so dangerous...unless safeguarded in every way possible against abuse.”<sup>104</sup> Bonaparte responded by first identifying two safeguards against abuse: “First, a centralized and accurately ascertained authority and responsibility; and, second, such a system of records as will enable the legislative branches of the Government, the head executive, and possibly the courts, to fix the responsibility for anything that goes wrong.”<sup>105</sup> Interrupting the Attorney General, Sherley asked if this method was merely “that you can lock the door and prevent a second horse from being stolen after the first one has been lost.”<sup>106</sup> In his mind, then, Sherley viewed this as a way to discover abuses, but not to prevent them from occurring. Bonaparte did not fully dispel Sherley’s fears. Retreating from this tack, Bonaparte instead tried another, more effective method.

When discussing the possible restrictions that could be placed upon his detectives, Bonaparte told Sherley that “any restriction which limits the scope of the employment of

<sup>103</sup> Ibid., 1012-1013.

<sup>104</sup> Ibid., 1032.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

a force of this character would tend to the advantage of lawbreakers.... I believe that [punishing lawbreakers] is very imperfectly attained under our system of criminal law, and that a very large proportion of criminals escape punishment. So I think that the first duty in regard to a force of this character is to make it efficient.”<sup>107</sup> Bonaparte again reiterated the administration’s efficiency argument, basing his argument on the premise that an efficient force would be much less open to abuse. In this, he disputed Sherley’s premise that an efficient force would be more dangerous. Reflecting on Sherley’s thoughts, Bonaparte disputed “the statement that its danger as an engine of oppression or abuse is in ratio with its efficiency for its legitimate purposes. On the contrary, I think it is rather the other way, that the detective force which minds its own business, and attends to that, and does nothing else, is more effective as a means of suppressing crime than one which is used for any extraneous purpose. But it is a fact, which everybody recognizes, that there are certain inherent dangers of abuse in any system of police, and especially in any system of detective police.”<sup>108</sup> Bonaparte then quoted from his July letter to the President in which explained his decision, and assured Congress that he had allowed him to “tell this committee, or anybody else who has a legitimate right to inquire into it, what any one member of that force should be doing at any particular time.”<sup>109</sup> All responsibility for overseeing this new force would be placed upon the shoulders of the attorney general. Congressman Sherley, however, remained skeptical.

Challenging Bonaparte’s claims of executive supervision, Sherley pointedly questioned the potential problems that this could cause. Bonaparte’s “whole theory of our Government,” Sherley observed, “looks to the fact that we should have a Government of

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<sup>107</sup>Ibid.

<sup>108</sup>Ibid.

<sup>109</sup>Ibid., 1033.

laws and not of men, and that the rights of a citizen should depend not so much upon the wisdom and discretion of an executive officer, as upon fixed rules of law and conduct that shall be applicable both to the citizen and the officer of the Government.”<sup>110</sup> This was Sherley’s clearest statement of Congress’s power to deal with detective agencies. Mere executive oversight could not truly protect citizens because “it is apparent that in...the history of this country, there have been abuses, either without the knowledge of such higher officer, or with the knowledge of a higher officer.”<sup>111</sup> “The idea that some of us have in mind,” he continued, “is how to safeguard an instrumentality, which...has been frequently used for oppression and for the continuation in power of men having the instrumentality at their command, so as to prevent such abuses in the future; and as to that point I do not think I have received a suggestion as to what should be done.”<sup>112</sup>

Bonaparte initially shirked the question, telling Sherley that no matter what checks and balances were devised, a corrupt administration could still cause trouble. An unimpressed Sherley responded that, even if perfection were unattainable, the questions still stood. Bonaparte then circled back to his original answer: “I think you ought to have somebody or other that is directly responsible for any abuse that may come to light. I think he ought to be in such a position that he can not say that he did not know anything about it, because it was his business to know about it.”<sup>113</sup> Sherley again found this answer to be evasive and interrupted by asking if Bonaparte wanted “to leave the question of the character of work to be done by this force to the officer who is made responsible for the

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<sup>110</sup>Ibid.

<sup>111</sup>Ibid.

<sup>112</sup>Ibid.

<sup>113</sup>Ibid., 1034.

force.”<sup>114</sup> Hoping for a concrete answer, Sherley rephrased his question, saying, “What I desire to learn from you, if possible, is whether you have in mind any provision that could be adopted as a part of the permanent law of the land that should restrict the activities of a detective force to what we might all agree should be its legitimate lines.”<sup>115</sup> Sherley’s statement clearly placed a congressional claim on legislating detective activities. In response, Bonaparte cited the difficulty of determining what constituted an abuse of the detective service. If no hard and fast rules could be laid down, Bonaparte argued, “then you must rest that in the discretion of some particular person in whom you have confidence and whom you can hold to account if there is anything wrong.”<sup>116</sup> Bonaparte and Sherley went back and forth as to the legislative branch’s proper role in overseeing detective bureaus. Sherley held fast to Congress’s powers, while Bonaparte sought to increase the power of the executive branch by vesting the decision-making powers in executive offices.

Members of the House Appropriations Committee then moved to question Bonaparte about specific situations and whether such a detective agency could be used to “spy” on government employees. When asked about such hypothetical investigations involving his department, Bonaparte responded, “If I was informed that one of my subordinates was in the habit of meeting with certain persons who were notoriously suspected...of being engaged in certain forms of crime, I would consider it as a perfectly proper thing to employ a detective in order to ascertain whether he did or did not do that. I believe that such a man who leads an honest, clean life and who does his duty to the Government has nothing to fear from investigation by any detective force. Anybody can

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<sup>114</sup>Ibid.

<sup>115</sup>Ibid.

<sup>116</sup>Ibid., 1035.

shadow me, as much as they please.”<sup>117</sup> Bonaparte offered one important caveat, emphasizing that he did not approve “of the use of a detective force either by the Government or by anybody else for the ascertainment of mere matters of scandal and gossip that could affect only a man’s purely private life.”<sup>118</sup> Bonaparte drew the line at this point. No committee member, however, questioned him on what constituted a man’s private versus his public life. Bonaparte then concluded his testimony by reiterating the protections that he believed were needed for this type of service. He told the committee members that “any abuses in the use of this force which we have the slightest reason to suppose could arise, will be fully safeguarded against by the suggestions I have made; that is to say, by a concentrated and ascertained responsibility and by a strict and inflexible discipline. If, however, it is deemed necessary to provide safeguards against abuses, I should put that in the form of a suitable penalty imposed upon any such abuses.”<sup>119</sup> In fact, Bonaparte felt “the whole discussion seems to me to be aside from the really practicable point, which is to provide the Government with adequate means of ascertaining and punishing crime.”<sup>120</sup> A drawn-out discussion of the potential abuses inherent in a detective system would only divert Congress’s attention from the important goal of stopping crime. Congressman Sherley, nonetheless, returned to this line of questioning, bringing up Congress’s other method of limiting the detective agencies.

Up to this point, Congressman Sherley had questioned Bonaparte on the legislation Congress could adopt to limit potential abuses of a detective bureau. The Attorney General had countered Sherley’s questions by arguing that an informed

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<sup>117</sup> Ibid., 1037.

<sup>118</sup> Ibid., 1038.

<sup>119</sup> Ibid., 1039.

<sup>120</sup> Ibid.

executive who could dismiss troublesome employees would provide sufficient safeguards to citizens. Sherley proposed another method, one that involved Congress's power of appropriation. He told Bonaparte that "the great power which the legislative body always has is through the appropriations which can limit the number and personnel of any service."<sup>121</sup> If Congress could not legislate against potential abuses, the only option left would involve how much money to appropriate. Bonaparte quickly backpedalled, assuring Sherley it was "the duty of Congress to carefully investigate any alleged abuse of such a force. I think it is the particularly useful and obvious duty of Congress for the very purpose of ascertaining whether there is danger of any such abuses."<sup>122</sup>

The committee members then returned to the matter of Congress's investigative authority, asking a simple question of Bonaparte that had long-term ramifications. When raising the issue of investigations of abuses, Congressman Fitzgerald asked Bonaparte a hypothetical question about a recalcitrant executive refusing to give records to Congress. Bonaparte responded, "I suppose they could impeach him." Congressman Smith then retorted, "He would be within his legal right and not impeachable." Bonaparte rephrased, saying, "The Senate would have the legal right to convict him." Smith, however, again told Bonaparte, "Not if he was within his legal right."<sup>123</sup> At this early discussion, what later became the problem of executive privilege was raised, with no satisfactory answer. The committee's questioning returned to the matter of whether Congress should legislate against abuses.

When concluding their questioning of Attorney General Bonaparte, Representatives Sherley, Smith, and Tawney asked if Bonaparte felt "that the law-making

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<sup>121</sup> Ibid., 1040.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

body ought to wait until an enormous offense is committed before passing” restrictions against politically motivated investigations.<sup>124</sup> Bonaparte had no objection, and Sherley thereupon asked whether Congress had an “affirmative duty to put such restrictions upon such a service.”<sup>125</sup> Bonaparte concluded that this would be their duty, if they had any reason to anticipate such abuses. Tawney then asked if such a service could conduct politically motivated investigations, to which Bonaparte agreed. The temptation to use such a force for political reasons, Tawney feared, may be very strong.<sup>126</sup> Bonaparte had no response to this and the hearing concluded.

The questioning by members of the House Appropriations Committee of the President’s motives in asking for a centralized Secret Service, and their generally positive response to Attorney General Bonaparte’s creation of his own detective bureau, reflected Congress’s authority with respect to an expanding executive. The Progressive-style politics of Theodore Roosevelt had been based on a desire for efficiency and cost effectiveness, objectives which could only be achieved through larger, more powerful executive departments and officials. Many members of Congress were threatened by these developments, and they countered that any growth in executive departments, especially in terms of investigatory powers, would inevitably threaten American citizens with spies. While the leaders of Congress had acted at this time to preclude a centralized Secret Service from becoming a “national spy network,” they nonetheless affirmed Bonaparte’s decision to create his own detective bureau as a proper use of appropriations and a beneficial method of spreading investigatory power throughout the government. Fears about the potential for abuse remained, however, and members of the House

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<sup>124</sup> Ibid., 1041.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

Appropriations Committee pressed the attorney general about how that potential could best be addressed. While Bonaparte argued for more executive control as the best safeguard, Congressmen like Sherley and Tawney insisted that Congress would have to either legislate restraints or limit appropriations. Both methods could be effective; the former, however, was never attempted while the latter required that federal crimes would increase incrementally. Just a year after this debate about how best to protect Americans from a government spy network, however, Congress acted to increase the scope of federal crime and thereby expanded a network that would spy on the private morals of men.

When debating the legislation that became the White-Slave Traffic Act of 1910, popularly known as the Mann Act, members of Congress shifted their focus from safeguarding the rights of citizens to the question of states' rights. The passage of this act, in effect, increased the powers of the Department of Justice and its Bureau of Investigation tremendously. In time, the safeguards that Attorney General Bonaparte had originally proposed proved to be meaningless. An Attorney General could no longer personally review the summaries of the daily reports of his agents. The Bureau's personnel increased in number and were assigned to offices throughout the country. Bureau agents no longer focused on clear-cut cases, such as antitrust violations, but on the murkier matters of personal morality. Attorney General Bonaparte's assurances that his men would never look into "the private matters of men" disappeared with the passage of the Mann Act, as the private matters of men became very public matters of jurisprudence. With the White-Slave Traffic Act of 1910, the hopes that Congressmen Sherley, Tawney, and Smith held that Americans could be safeguarded from a centralized

spy system through sheer power of appropriations were dashed. The mixing of morality, crime, and politics instead served to benefit the Bureau of Investigations.

During congressional debate about the Mann Act, those who opposed the measure decried its attempt to encroach upon the powers of the states. As Congressman Richardson warned his fellow representatives, the act “undoubtedly violates, in my opinion, the police power of the States, which is said to be supreme, exclusive; and, as I have said before, if the police power of the State is exclusive, then the Federal Government can not, under the warrant or authority of the Constitution, invade it.”<sup>127</sup> Later during this debate, he emphasized that he was “just as much in favor as any gentleman on the floor of this House to upholding any theory, policy, or principles of morals, but I am not willing to see the rights of the State in so important a matter as the police rights of the State invaded by the Federal Government under this pretense of aiding and improving morality.”<sup>128</sup> For Richardson, state governments could capably deal with this situation.

Those holding the opposite view set aside the question of constitutionality because of the desirability of having the federal government stomp out interstate white-slave traffic. Congressman Sims pointedly argued that “if it was plainly unconstitutional, and so appeared to me, regardless of sentiment, I would vote against it. But where public health and public morals appeal to us for our assistance and maintenance, I would have to be convinced that it was positively unconstitutional to prevent me supporting a bill the object and purpose of which are such as to meet with the approval of every man, woman,

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<sup>127</sup> *Congressional Record* v. 45 (61st Cong., 2d sess.: 6 Dec 1909-25 June 1910), 809.

<sup>128</sup> *Ibid.*, 810.

and child worthy of living in a civilized State.”<sup>129</sup> For Sims, the constitutionality issue was relative. The federal government had the obligation to protect its citizens, and should act accordingly. In the most harrowing terms, Sims recalled that “whenever I think of a beautiful girl taken from one State to another, from a Territory to a State, or from a State to a Territory by holding out to her the promise of improvement in her condition, then to Chicago, New York, or any other city, and drugged, debauched, and ruined, instead of being murdered, which would be a mercy after such treatment, retain her there and sell her to any brute who will pay the price, I can not bring myself to vote against this bill or any similar measure.... Pass this law, take care of the girls, the women—the defenseless—and let the courts say whether or not the law is constitutional.”<sup>130</sup> To Sims, this act merely supplemented state laws, preventing “the taking away by fraud or violence, from some doting mother or loving father, of some blue-eyed girl and immersing her in dens of infamy.”<sup>131</sup>

Another of the bill’s defenders, Congressman Russell, argued that those opposed to it saw “visions of state autonomy destroyed, of state rights roughly ridden over, a consolidated government, and the police powers of the States absolutely set at naught.”<sup>132</sup> To the contrary, Russell argued, “this bill is not an attempt to regulate the morals of citizens of the several States; it does not attempt to interfere with any state statute; it does not attempt to exercise a single power which the States themselves could exercise; but it does attempt to regulate commerce between the States.”<sup>133</sup> Congress had the constitutional right, Russell argued, to regulate interstate commerce, and that was all this

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<sup>129</sup> Ibid., 811.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid., 812.

<sup>132</sup> Ibid., 814.

<sup>133</sup> Ibid., 815.

bill attempted. Congress's right to regulate interstate commerce made this bill completely constitutional. He then reiterated Sims's argument, painting a picture of depravity as "65,000 daughters of American homes each year [were] conscripted into the great army of prostitutes. Think of the tears and the woe and the shame and the poverty and the disease caused by this infamous band of pimps and procurers, who are preying each year upon American womanhood and girlhood."<sup>134</sup> For the defenders of the Mann Act, the constitutionality question was answered if interstate transport of women for such purposes was considered interstate commerce. If it was, then the federal government could intervene, as Congress alone had the power to regulate interstate commerce. To protect the nation's women, Congress had to act. Other representatives argued that the proponents of this bill were attempting to police morality, which was strictly a state's right.

Congressman Adamson objected to the Mann Act, advising his fellow colleagues that "the advocates of this bill concede that Congress has no power to legislate against prostitution per se, and insist that this bill has no such purpose, claiming, it appears, that they are aiming this legislation at abuses in interstate commerce, which they seek to purify. The right and duty of regulating the morals of this country were wisely reserved to the States, and I am opposed to the Federal Government seeking to interfere with the exercise of those rights and the discharge of those duties."<sup>135</sup> He went further, arguing that "if this bill looked to the protection of female virtue we would unanimously support it. But no such pretense is even made. The only professed and possible purpose of this legislation is to purify interstate commerce, making character the test. Of course, carried

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<sup>134</sup> Ibid., 821.

<sup>135</sup> Ibid., 823.

to the last analysis, that proposition would endeavor to exclude all vile and impure people from the use of interstate facilities for commerce. Then there would be a wide field of different opinions as to who was vile and impure and what practices constituted immorality.”<sup>136</sup> Adamson, herein, attacked what he considered the root difficulty of the proposed bill. Although disguised as regulating interstate commerce, the bill in actuality attempted to legislate morality. As different people held different notions of what was moral, the states should wisely be in charge of policing such actions. According to Adamson, this act was merely a hamfisted attempt of the federal government to regulate private actions.

Adamson then returned to the theme of federal control that had earlier been articulated by the Roosevelt administration. He realized, he assured his colleagues, that “some people have run mad on centralization.... I know that some people scout the idea of states rights as heretical..., akin to secession and rebellion.... [Centralizers] feel like calling out the army and navy to suppress red-handed rebellion when a man refers to the Constitution and invokes the good old-time doctrine of our fathers, that States ought to take care of the morals of the country and not overload Congress with unnecessary burdens never intended for it.”<sup>137</sup> Adamson concluded that “a man who swears to support the Constitution should remember that the Constitution makes this a dual government—the Federal Government, with prescribed rights and duties, and a number of state governments, charged with the balance—the great body—of the duties and clothed with all the balance—the great body—of the rights and powers not expressly prescribed and

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<sup>136</sup> Ibid., 1030-1031.

<sup>137</sup> Ibid., 1032.

specified as delegated to the Federal Government.”<sup>138</sup> Whether or not the act advanced the public good, the Constitution forbade the Congress to regulate morality. Any attempt to do so by invoking the interstate commerce clause crossed the line of propriety, according to Adamson and his fellow dissenters.

Supporters of the bill, in contrast, returned to the idea that they were merely legislating against a form of interstate commerce. As one Representative argued, “What right is it that we propose to take from any State, which that State now enjoys under the police power? Wherein will we trench upon the police power of any State, should we prohibit this form of interstate commerce?”<sup>139</sup> This representative concluded that Congress was not “seeking to interfere, and do not interfere, by the enactment of this act, with the police powers of the States. We merely seek to occupy the field of interstate commerce, and to use our powers over that field, to crush a traffic which has no right to a place in the world of honorable business. Congress alone is adequate to deal with this traffic in this field.”<sup>140</sup> In the end, this view that the Mann Act was constitutional prevailed, and the bill was enacted. It became law, and in the process, greatly expanded federal jurisprudence.

Instead of looking to anti-trust violations and land fraud, the Department of Justice’s newly created Bureau of Investigation could now police the nation’s morals. Despite the conviction of many members of Congress that the Mann Act dealt merely with interstate commerce, Department of Justice officials quickly realized they would have to define what constituted the prohibited conduct with “immoral purposes” over state lines. In these cases, Bureau of Investigation agents would have to be stationed

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<sup>138</sup> Ibid.

<sup>139</sup> Ibid., 1038.

<sup>140</sup> Ibid., 1039.

throughout the nation (instead of remaining in Washington) and would have to investigate the private actions of men. Ultimately, the growth of Mann Act cases would both increase the responsibility of the Department of Justice's Bureau of Investigation as well as the Attorney General's ability to oversee this new agency. Bonaparte's assurances that agents could be supervised effectively by the attorney general's "daily reading" of their reports became untenable. At the same time, Congress increased the Department's appropriations to keep up with the growing size and diversity of federal crimes. Such growth had as one result the limiting of congressional questioning of the actions and methods of the Bureau of Investigation. Increasingly, members of Congress found the promotion of law and order to be an effective means of ensuring their own reelection. When questions were asked of Bureau officials, however, they often reflected the original concerns articulated in 1908 and 1909 about the challenges posed by the creation of such an investigatory bureau—questions centering on oversight and responsible management.

## Chapter 2

### Scandal and Missed Opportunities: 1914-1924

With the onset of World War I, the Bureau of Investigation's appropriations and influence grew immensely. From investigating white-slave trafficking and anti-trust violations, the war pushed the Bureau into investigations critical to national security.<sup>1</sup> To fund these wartime efforts, Congress increased the Bureau's appropriation from \$455,698 in 1914 to \$1,746,224 in 1918. This increase continued through 1924, with that year's appropriation totaling \$2,245,000. While the years 1921 and 1922 saw slight decreases in Bureau appropriations and staff, the overall trend reflected a decided increase in Bureau responsibilities because of the war.<sup>2</sup>

Once Armistice had been signed in 1918, the Bureau jealously guarded its newfound powers. The First Red Scare, with the 1919–1920 Palmer Raids as its zenith, highlighted these efforts to maintain the wartime internal security responsibilities. This incredible expansion undermined the safeguards imposed by Attorney General Bonaparte which would have “required an assertive and inquisitive Congress, a conscientious attorney general, a shared belief in administrative accountability, and, perhaps most important, dispassionate discussion of the issues.”<sup>3</sup> World War I and the ensuing Red Scare inflamed the nation’s passions. Bureau officials took full advantage, adding internal security to the Bureau’s responsibilities in ways that would have been impossible absent such conflicts. Congress, during these years, willingly allowed the Bureau’s actions to attack the nation’s perceived enemies in order to keep the people safe. Even

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<sup>1</sup> Williams, “Without Understanding,” 101.

<sup>2</sup> Athan G. Theoharis, et. al, ed., *The FBI: A Comprehensive Reference Guide*, (New York: The Oryx Press, 2000), 4.

<sup>3</sup> Williams, “Without Understanding,” 101.

when members of Congress finally began to question the Bureau's actions in the wake of the Palmer Raids, wholesale changes withered under Congressional debate. Congress's feeble attempts to contain the Bureau's questionable actions in this era ensured failure and served to embolden future illegalities.

With the war raging, Bureau officials held fast to the Bureau's war work. The Attorney General observed in his annual report that "up to about the time of the signing of the armistice the number of special agents of the bureau continued to increase" because "the work of the Bureau of Investigation during that year was concerned very largely with matters arising out of the war."<sup>4</sup> Congress regularly increased the Bureau's funding and personnel to address its increased duties. Members willingly supported the increases, giving the Bureau its first domestic surveillance assignment for the duration of the war.

One of the Bureau's earliest wartime tasks was the arrest of draft-dodgers. The procedures first employed in this effort would reemerge in the post-war years, including the resort to dragnets and mass arrests of those presumed guilty. Senators took notice after one such dragnet, questioning the actions of the Department of Justice although stopping short of condemning them. Senators differed in their opinions on the nature of this raid. Some wholeheartedly objected to the detainment of innocent people while others "could not accept the idea that a roundup must be limited and restricted in order to make sure that innocent persons were not arrested. The most important thing, they emphasized, was to prevent escape of the guilty."<sup>5</sup> This pattern was repeated in the next few decades when members of Congress reacted to subsequent actions of the Department

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<sup>4</sup> *Annual Report of the Attorney General of the United States for the Year 1919* (Washington, D.C.: United States Government Printing Office, 1919), 12.

<sup>5</sup> Lowenthal, 31-32.

of Justice. While questioning the legality of the Department's actions, Congress never enacted any legislation to curtail the problems.

Senator Chamberlain of New York was the first to speak on the issue of slacker raids. On September 4, 1918, he read into the *Congressional Record* an editorial from the *New York World* criticizing "the wholesale round-up of so-called draft slackers" as "in defiance of the spirit of American law." Government officials, the editorial argued, were neither "armed with...warrants," made "no adequate warning of the raid," nor gave adequate "provision...for the care of the captives. The guilty and the innocent, the strong and the weak, the law-abiding and the law-defying, were herded together promiscuously in armories and police stations, and private citizens, usurping judicial functions, passed judgment upon droves of free-born Americans, kidnapped and insulted."<sup>6</sup> The editorial concluded that "in this monstrous invasion of human rights, it is noticeable that agents of the Department of Justice...participated. By whose orders were...these forces turned loose, and by what authority did such a mob assume to act when it took captive thousands of men who, as Mr. DeWoody, chief of the New York division of the Department of Justice, now admits, were not properly subject to suspicion."<sup>7</sup> Basing his remarks upon this editorial, Senator Chamberlain decried the abuses perpetrated by the Department of Justice, among others.

Chamberlain began his remarks on a patriotic note, claiming, "There is no man in the Senate...who despises a man who undertakes to evade his military duty any more than I do."<sup>8</sup> Nonetheless, he continued, these slackers "ought to be reached by due

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<sup>6</sup> *Congressional Record* v. 56 (65<sup>th</sup> Cong., 2d sess.: 3 December 1917-21 November 1918), 9976.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, 9977.

process of law.”<sup>9</sup> The Senator concluded by telling his colleagues that he did not want men who had done their duty vilified through such raids.<sup>10</sup> Chamberlain’s remarks triggered a debate among some fellow senators who shared his scorn for these extralegal activities.

Senator Calder, for one, responded having witnessed some of the arrests while in New York City, at which time he had “protested to the officers in command of some of these squads against the manner in which the raids were being done.... The Assistant Attorney General, with whom I talked yesterday, said the matter was without his knowledge....”<sup>11</sup> Calder continued, informing his colleagues that “thousands of men...many over the draft ages, who could have no card of classification, were taken by the authorities and sent to police stations and herded together in school yards and armories, and were compelled to have responsible people come and identify them.”<sup>12</sup> Senator Brandegee deemed “the question is not whether or not a man is a slacker; the question is whether the man who presumes to arrest him has any authority to arrest anybody.”<sup>13</sup> A debate erupted with senators discussing the merits of such a raid. For some, catching draft dodgers necessitated such roundups, while others, like Senator Calder, disagreed.

In accordance with Congress’s deliberative nature, many senators felt the best course was to gather additional information. Both Senators Henry Cabot Lodge of Massachusetts and Frank Brandegee of Connecticut felt that the Senate needed to

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

ascertain the facts.<sup>14</sup> Absent such an inquiry, Brandegee refused to “denounce the Department of Justice, who...disavow the whole proceeding and say they are utterly ignorant of it.”<sup>15</sup> He proposed instead that the Committee on Military Affairs (or the Committee on the Judiciary) should “take pains to request the heads of the various departments of the Government to advise us what instructions were issued” before the raid occurred.<sup>16</sup> These senators did not want to rush to judgment without complete information, even if constitutional rights were blatantly violated. One day later, a resolution to investigate the matter was introduced in the Senate. On September 5, Senator Smoot of Utah urged the Senate to approve a resolution calling for an investigation into the matter by the Committee on Military Affairs since, as the resolution stated, “reports indicate that in the so-called ‘round-up’ sailors and soldiers in the uniform of the United States participated.”<sup>17</sup> Action on this resolution, however, was tabled until the next day.

On September 6, the Senate’s debate centered on the resolution to have the Committee on Military Affairs request more information. The debate veered away from the issue of the raids’ legality to more mundane procedural questions. Senator Jones of New Mexico argued that the proper committee to make inquiries was the Committee on the Judiciary, not Military Affairs, because “the proceedings in New York were taken under the Department of Justice.”<sup>18</sup> Senator Jones continued, however, that such an investigation would be unnecessary as he “commend[ed] the activities of the people...in

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<sup>14</sup> Ibid., 9983.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., 9986.

<sup>18</sup> Ibid., 10063.

rounding up these slackers.”<sup>19</sup> As he understood it, similar raids in other cities had met with applause and the world had to be shown that slackers would receive no comfort from the United States.<sup>20</sup> Senator Jones concluded by reiterating that the proper committee to inquiry into these raids would be the Committee on the Judiciary and moved that Senator Smoot’s resolution be so changed.

Defending his own committee’s right to pursue these hearings, Senator Chamberlain remarked that he would “resent...that it be referred to any other committee than the Military Affairs Committee” because the question involved the possible use soldiers and sailors in the roundup.<sup>21</sup> He proceeded to call the wholesale arrest of citizens in this action a “fundamental violation of liberty.”<sup>22</sup> Senator Poindexter immediately rejoined, repeating that any innocent person who might have been arrested during these raids should gladly help officials in such an important project.<sup>23</sup> The authority for such actions, if not inherent in the draft law, Senator Poindexter argued, ought to lie with the President himself. In times of war, the President must act with speed and sureness. Enforcing the draft law, accordingly, should allow the President to round up slackers in any way possible, including by the wholesale arrest of innocent bystanders.

Only the Judiciary Committee, argued Senator Overman, should investigate such activities because “the charge made here is against the Department of Justice. Mr. Bielaski himself, the head of this bureau in the Department of Justice, assumes the responsibility for it.”<sup>24</sup> According to Overman, the sole question was whether the men

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., 10064.

<sup>22</sup> Ibid., 10065.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

could be arrested without warrant and sent to jail. The principle of the matter struck at the heart of the Judiciary Committee's purpose and the alleged involvement of soldiers and sailors was irrelevant.<sup>25</sup>

Senator Frelinghuysen expressed another view, one that was completely procedural. He argued that since the Military Affairs Committee had first considered the conscription act, any investigation into the act's enforcement should also be conducted by Military Affairs.<sup>26</sup> As senators staked their positions, the debate took on a more heated tone, with senators reading letters from those affected and expressing dismay over such actions. Ultimately, the Senate never conducted a full investigation, leaving it to the President to investigate these actions.

Senator Fletcher of Florida pointed out that President Wilson already knew about the raids and had already demanded an investigation. In light of these actions, Fletcher asked whether "there [was] any need or occasion for this resolution?"<sup>27</sup> Senator Fall responded that the President was "determined that the law shall be obeyed.... I have no doubt he will take steps to see that it is, and if it is, in my judgment, he will at least refuse to be connected with the arbitrary Russian-like acts which were perpetrated in New York City day before yesterday and the day before that, and which, I understand, have been by his orders stopped for the time being."<sup>28</sup>

The resort to draft raids, in any extent, had already been abandoned soon after Congress criticized the actions. According to a Bureau press release, this had been the plan all along, though statements by agents on the first day of the raid indicated such

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<sup>25</sup> Ibid., 10066.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., 10070.

<sup>28</sup> Ibid.

raids were to continue indefinitely.<sup>29</sup> President Wilson requested an investigation and, once it was completed, Attorney General Gregory “accepted responsibility for the general plan against draft slackers. His official relationship to the Bureau made him responsible, but did not compel him to approve or endorse behavior contrary to his orders.” Instead, he “condemned the raids as ‘contrary to law.’”<sup>30</sup> While these actions were “‘without consultation with me or with any law officer of the department,’ concluded Gregory, the Bureau simply acted inappropriately “out of an ‘excess of zeal for the public good.’” But Max Lowenthal pointed out the Bureau “had forgotten Mr. Bonaparte’s precept, that they must not act except under the Attorney General’s orders and with his full knowledge.”<sup>31</sup> Both the President and Congress accepted this report and were satisfied that similar actions would not happen again.

The Bureau, however, had moved beyond draft raids and, in early 1917, began to monitor immigrant and native-born radicals. In February of that year, Congress enacted the Immigration Act, which authorized the deportation of alien anarchists and revolutionists. Then, in June, Congress enacted the Espionage Act, an act directed to curb treason, but which was used by the Justice Department to challenge political dissent.<sup>32</sup> To meet these new responsibilities, Justice Department officials established an alien registration section and soon employed a young lawyer, J. Edgar Hoover. This appointment, during a time filled with anti-alien fervor, marked an important beginning for Hoover.<sup>33</sup> This “fever” led to a sharp increase in the Bureau’s domestic surveillance

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<sup>29</sup> Lowenthal, 34.

<sup>30</sup> Ibid., 35.

<sup>31</sup> Ibid.

<sup>32</sup> Theoharis and Cox, 48.

<sup>33</sup> Cook, *The FBI Nobody Knows*, 76.

powers during the war. Once the war concluded, however, Bureau officials were loath to return to the Bureau's prewar position.

Once the debate over the draft raids had subsided, another new element in the Bureau's work came to light. The public learned in December 1918 that Bureau agents were actively "investigat[ing] and cataloging the political opinions and affiliations of citizens."<sup>34</sup> To effect what marked a change in Bureau policy, the attorney general ordered Bureau Chief A. Bruce Bielaski to cooperate with Congress. Testifying at a hearing before a Senate Judiciary subcommittee concerned about the possible pro-German sentiments of the brewing industry, Bielaski testified that "Department of Justice, as the law-enforcing arm of the Government, has been primarily interested in the collection of evidence for the purpose of prosecution, and for many years has made it a rule not to make public information so collected in any other matter; but the Attorney General feels that because of the direct request of the committee and the importance of the subject matter under investigation he should make an exception to the department's general rule and lay before you the data which the department has with respect to German propaganda."<sup>35</sup> As Bielaski reported, the Justice Department could not investigate anything that was not a violation of federal law. The appropriations bill of 1916 changed this, he argued, pointing out that "at the request of the department [of Justice], effective the 1<sup>st</sup> of July, 1916, the appropriation which provides the money for the Bureau of Investigation was amended so as to make it possible to make investigations of matters in which the State Department was interested, at the request of the Secretary of State, and

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<sup>34</sup> Lowenthal, 36.

<sup>35</sup> United States Senate, *Brewing and Liquor Interests and German and Bolshevik Propaganda*, Vol. II (Washington, D.C.: United States Government Printing Office, 1919), 1388. Hereafter, *Brewing and Liquor Interests*.

with the approval of the Attorney General, even though those matters did not amount to violations of law.”<sup>36</sup> Bielaski contradicted his statement that this collection of information had only occurred since the 1916 appropriation act as, in a previous statement, he admitted that “during the war we have collected an immense amount of information. Some of it has been in our files for a long time and some of it has only come to us comparatively recently.”<sup>37</sup> As early as 1914, Bielaski’s Bureau had begun to investigate the German information bureau and the activities of a German doctor.<sup>38</sup> Exploiting this appropriations statute and congressional interest in combating wartime espionage and sabotage, Bureau officials began to increase Bureau domestic surveillance of citizens’ political beliefs.

No pre-war statute allowed the Bureau to examine German propaganda except in the case of a direct violation federal law. This restriction led the Attorney General to request that Congress approve such a law. Congress willingly agreed, enabling the Department of Justice to institute investigations that amounted to domestic surveillance. Members of Congress endorsed the changes during the war but had not foreseen the lengths that Bureau officials would go to sustain this newly increased power. The subcommittee’s hearings, however, made it apparent that much of the Bureau’s evidence was inaccurate or Bureau officials had drawn improper conclusions about some Americans. Some of the powerful and influential Americans named by the Bureau, especially William Randolph Hearst, had ardent defenders on the subcommittee, with many witnesses pointing out that the Bureau had made numerous errors in judgment and

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid., 1390.

approach.<sup>39</sup> Many subcommittee members were particularly troubled by the Bureau's reliance on hearsay because "the Bureau of Investigation did not itself have first-hand knowledge of the facts it was trying to prove, and its informants who claimed to have such knowledge were not available for cross-examination."<sup>40</sup> Chairman Overman, however, deemed hearsay to be appropriate in this setting because "the whole thing would be a farce, absolutely, if we are going to hold it down to the strict rules of law. If we do that, we never will get any testimony at all."<sup>41</sup> These witnesses, he continued, were not charged with any crime, so publicizing their names would not cause any harm.<sup>42</sup> When examining people's political beliefs, future congressional committees would repeat this logic. Bureau agents had catalogued individuals based on their political beliefs during the war, under a very specious legal right. With the signing of the Armistice, however, Bureau officials were forced to redefine the Bureau's agenda to continue examining domestic political thought.

After the signing of the Armistice on November 11, 1918, Bureau officials shifted their rationale for monitoring political thought. Wartime measures like the Espionage and Sedition Act no longer provided the authority for investigation of domestic beliefs. Bureau officials first hoped Congress would enact a peacetime sedition act and, when none was forthcoming, settled on the imminent threat of radical revolution to continue wartime surveillance efforts. Some congressmen again supported these actions and publicized the presumed serious threat of radicalism through committee hearings. An anti-radical fever crescendoed with raids against radical unions in 1919 and 1920, at

<sup>39</sup> Lowenthal, 37.

<sup>40</sup> Ibid., 40.

<sup>41</sup> *Brewing and Liquor Interests*, Vol. II, 1998.

<sup>42</sup> Lowenthal, 44.

which time members of Congress finally began to examine the abuses of the Bureau. Once again, however, Congress did not enact any laws to preclude future Bureau abuses. Senators were split on whether Bureau officials had acted appropriately or had gone too far. They were willing to increase the Bureau's appropriations and a new attorney general, Harlan F. Stone, instituted needed administrative rules to reform the Bureau. Absent proper checks placed by legislation, however, Bureau officials were left to their own devices in the years to follow. The political crisis created by the furor over Bureau abuses, which offered a promising opportunity for Congress to implement legislation to halt the Bureau's attempts to undermine Americans' civil liberties, ended summarily. Congress's failure to enact a legislative charter created an opening for Bureau officials to act as they felt proper.

With the end of the war, Bureau officials "assured Congress that following the war the Bureau's budget could be cut back to peacetime levels."<sup>43</sup> Attorney General Palmer, in his 1919 annual report, stated that "between November, 1918, and January, 1919, the number [of special agents] remained about stationary."<sup>44</sup> To check this trend of decreased appropriations, Bureau officials had to find a new issue. In that same report, Palmer highlighted this new issue: social and economic unrest, which were "rife throughout the world; the United States is not exempt."<sup>45</sup> This threat required an increase in the Bureau's work, necessitating "a slight increase in the number of special agents."<sup>46</sup> The seeds were planted for an increased role, and the Overman committee quickly latched onto Bolshevism as the means to continue an investigation into domestic politics.

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<sup>43</sup> Lowenthal, 48.

<sup>44</sup> *Annual Report of the Attorney General of the United States for the Year 1919* (Washington, D.C.: United States Government Printing Office, 1919), 12.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

The relationship between the Bureau and the committee became more intertwined once the war concluded and wartime measures to combat sedition became obsolete.

On January 9, 1919, Bureau Chief Bielaski made his final appearance before Overman's committee, calling "attention to 'radical' anti-militaristic organizations which were trying to amalgamate...on the model of the Russian Soviet councils."<sup>47</sup> Days earlier, the *New York Times* reported that the local office of the Department of Justice had taken steps "to prevent the dissemination of Bolshevik propaganda."<sup>48</sup> The Department was monitoring meetings of "persons with Bolshevik leanings" and had learned that "secret agents of Lenin [sic] and Trotsky [sic] had recently come to this city from Russia by way of Siberia with a large Bolshevik propaganda fund amounting to \$300,000."<sup>49</sup> New information appeared weekly that connected the end of the war to an increase in Bolshevik actions in the United States. Major E. Lowry Humes, counsel for the Overman committee, publicly claimed to have been informed by a "government report" that "since hostilities ceased...there have been a number of newspapers which have become fiercely outspoken in their championship of the anarchial [sic] doctrines of the I.W.W. and its radical sisterhood, the Bolsheviks."<sup>50</sup> While the source of the report remains unknown, it is plausible that it came to the Overman committee from the Bureau of Investigation.

One possible connection between the committee and the Bureau came in the person of Archibald E. Stevenson, described by historian Regin Schmidt as "a zealous anti-Communist and New York lawyer with extensive intelligence connections."<sup>51</sup>

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<sup>47</sup> Lowenthal, 48.

<sup>48</sup> "Bolshevist Fund Here," *New York Times* 7 January 1919.

<sup>49</sup> Ibid.

<sup>50</sup> "Senate Inquiry Directed at Reds," *New York Times* 19 January 1919.

<sup>51</sup> Schmidt, 138. According to Schmidt, Stevenson's connection to the Bureau is impossible to verify since several files are missing from the National Archives. However, during Stevenson's January 21, 1919, testimony before the Overman committee, he did identify himself as a special agent in the Bureau of

Stevenson's testimony before the committee linked investigations of pro-German sentiment during the war with Bolshevism after the war. According to published reports, Stevenson told the committee, "A close study of the present worldwide radical movements showed that it was of German and not Russian origin. It was all an outgrowth...of the Marxian theories, and the present Bolshevik situation in Russia had spread there from Germany."<sup>52</sup> This theory began when the Committee on Public Information published *The German-Bolshevik Conspiracy* in October 1918, which contained Russian sources that proved Lenin and Trotsky were German agents.<sup>53</sup> As historian Regin Schmidt argued, these documents "launched the thesis that the Bolshevik revolution was financed and controlled by Germany, thereby enabling the wartime passions against the Germans to be transferred into an anti-Bolshevik opinion following the Armistice."<sup>54</sup> Convinced by Stevenson's testimony, the Overman committee decided "to hear evidence on present radical activities, particularly those of the radical Socialists, the I.W.W., and kindred movements which are agitating for a condition in this country similar to that which now exists in Russia."<sup>55</sup> Shortly after Stevenson testified, the Senate adopted resolution 436 to extend the Overman committee's charge to include "any efforts being made to propagate in this country the principles of any party exercising or claiming to exercise authority in Russia" and, further, "to inquire into any effort to incite the overthrow of the Government of this country of all government by force, or by the destruction of life or property, or the general cessation of industry."<sup>56</sup> This resolution

Investigation before being connected to military intelligence. This latter connection was denied by the Military Intelligence Division.

<sup>52</sup> "I.W.W. Gaining Here, Senators are Told," *New York Times* 23 January 1919.

<sup>53</sup> Schmidt, 137.

<sup>54</sup> *Ibid.*

<sup>55</sup> "I.W.W. Gaining Here, Senators are Told," *New York Times* 23 January 1919.

<sup>56</sup> *Brewing and Liquor Interests*, Vol. I, xxix.

authorized the Overman committee to continue its investigation, much of it with the help of the Bureau.<sup>57</sup>

Even before beginning hearings on February 11, 1919, the Overman committee had forged a connection with the Bureau of Investigation. Major Hume, the counsel for the committee, requested “access to the records of the Department of Justice for the purpose of securing all possible information relative to the activities of various individuals and organizations to whom the attention of this Committee has been called.”<sup>58</sup> Attorney General Thomas Gregory granted “access to the files of this Department in all cases in which there is not some special reason why it should not be done.” Furthermore, he designated William Benham, “a first-class man from the Bureau of Investigation...to assist your Committee by co-operating with Major Hume in making any investigation which you may deem desirable.”<sup>59</sup> Benham spent months as liaison to the committee, conducting investigations into German and Bolshevik activities, examining witnesses, all while keeping his superiors within the Department of Justice informed.<sup>60</sup> Subsequently, during the committee’s hearings of February 11 through March 10, Benham reported that he was “engaged during the day assisting Major Hume before the subcommittee of the Judiciary Committee of the Senate. Made a trip to the Department of Justice to examine certain files.”<sup>61</sup> Once the committee’s public hearings ended, Benham played a crucial role in preparing its report, having been instructed by Senator Overman to keep in touch “day to day” to be ready for possible testimony before the committee once the report was

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<sup>57</sup> Schmidt, 140.

<sup>58</sup> Hume to Attorney General, 4 November 1918, Old German File 341494, Record Group 65, National Archives. Hereafter, OG Files.

<sup>59</sup> Attorney General Gregory to Senator Overman, 16 November 1918, OG Files.

<sup>60</sup> Schmidt, 142.

<sup>61</sup> Report, Benham to Bureau in re: Senate Resolution, 25 February 1919, OG Files.

released. At the same time, he began to “go through the files now at the [Senate] conference room and separate the Department [of Justice] files from those of the Senate, returning the Department files” to the Bureau.<sup>62</sup> The subcommittee’s public report confirmed much of the Bureau’s considerable influence. Benham helped to gather much of the information and he and Major Hume spent six weeks preparing it. In the end, Benham personally delivered the initial draft to Senator Overman.<sup>63</sup> The report itself highlighted the fears that Bureau officials promoted about the seriousness of the radical threat in the United States. The committee served as a useful vehicle to publicize the threat and placed the Bureau at the head of the agencies trying to protect the nation.

In their report, the committee made clear their intention from the very beginning. “The word Bolshevism,” the report emphasized, “has been so promiscuously applied to various political and social programs that we feel it is of paramount importance that the delusions and misconceptions as to what it really is, as it exists to-day in Russia, should be, as far as possible, removed and that the people of the United States should be thoroughly informed as to just what this much-discussed institution really is, both in theory and in practice.”<sup>64</sup> Any hope of an unbiased account of this ideology disappeared on the next page as Bolshevism had become a way for a “few individuals [to] exercise their authority and suppress all opposition by fear, terrorism, and force.”<sup>65</sup> The Bolsheviks “inaugurated a reign of terror unparalleled in the history of modern civilization” and had made Russians, “especially the women and children, the ward and

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<sup>62</sup> Ibid.

<sup>63</sup> Schmidt, 145.

<sup>64</sup> *Brewing and Liquor Interests*, Vol. I, xxix.

<sup>65</sup> Ibid., xxx.

dependents of that government.”<sup>66</sup> In the committee’s opinion, the only proper path to take would be to craft appropriate legislation “to make impossible a repetition of these activities...[which] may seek to undermine the Government or pervert the popular will by the adoption of similar methods against which the Federal statutes seem to provide no adequate safeguard.”<sup>67</sup> Such legislation designed to increase federal oversight of radical activities would inevitably increase the Bureau of Investigation’s authority. Members of other investigatory agencies were also interested; indeed, the director of military intelligence requested that the Bureau forward a copy of the committee’s report to them. Special Assistant to the Attorney General J. Edgar Hoover responded that “those copies are now being issued in printed form and assume that the same are being forwarded to you direct by the committee.”<sup>68</sup> By assisting the Overman committee’s investigation of radical propaganda both during and after the war, Bureau officials increased the Bureau’s stature before Congress and found new ways to continue its expansion into domestic surveillance. These advances concluded with the so-called Palmer Raids, which were intended to capitalize on the fear caused by bombs and to ensure that a compliant Congress would appropriate sufficient funds for the Bureau. Members of Congress, however, continued to bicker with one another about the propriety of Bureau officials’ actions.

The Palmer Raids signified the height of Bureau officials’ fear of the radical threat in the wake of World War I. These raids, in November 1919 and January 1920, aimed to remove radical immigrants from America by targeting, first, the Union of

<sup>66</sup> Ibid., xxxi, xxxix.

<sup>67</sup> Ibid., xlvi. This portion of the report was also copied into Benham’s files for the Bureau of Investigation and can be found in OG Files.

<sup>68</sup> Hoover to Brigadier General Churchill, 5 March 1920, OG Files.

Russian Workers and, second, the Communist and Communist Labor Party. With the assistance of the Department of Labor, which enforced immigration policy, Bureau officials combed major American cities, arresting thousands of members of these groups in single nights. Those arrested were held until immigration hearings could be held, often in deplorable conditions and they were denied access to family or lawyers. Praise of these raids quickly gave way to criticism, however, and Bureau officials were called before Congress to explain. In order to defend their actions, these officials at first blamed unresponsive directors within the Department of Labor and then, when those officials defended their actions, the paranoia rife throughout the country. In order to find a few radicals who had delivered bombs to government officials, agents of the Bureau of Investigation sought to deport thousands of innocent immigrants guilty of nothing more than membership in “radical” organizations.

On April 28, 1919, the United States seemingly confronted a new radical threat. Bombs were mailed to government officials throughout the nation. The resultant bombings absorbed the nation’s interest. With further explosions on June 2, Department of Justice and Bureau of Investigation officials argued the bombings were an attempt to overthrow the government by force.<sup>69</sup> These June bombs provided the opportunity for Bureau officials to act quickly, asking for appropriations from Congress and announcing a “thorough reorganization in order to improve [the Department of Justice’s] anti-radical capabilities.”<sup>70</sup> These appropriations requests and the department’s reorganization make apparent the role of Congress. Initially hesitant to fully fund the Bureau’s antiradical operations, members of Congress eventually succumbed to the pressures orchestrated by

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<sup>69</sup> Schmidt, 149.

<sup>70</sup> Ibid., 150.

an alarmed public and the Department of Justice. In the aftermath of the raids against radicals in November 1919 and January 1920, however, Congress initiated a critical investigation of the Department, although they stopped short of establishing meaningful oversight.

The first departmental action in the wake of the June 2 bombings was to reorganize to improve anti-radical capabilities.<sup>71</sup> Francis P. Garvan, whom Attorney General Palmer deemed “without a superior in the business of the detection of crime,” was appointed Assistant Attorney General in charge of investigations.<sup>72</sup> The new head of the Bureau of Investigation, following A. Bruce Bielaski’s resignation in early 1919, was William J. Flynn, a former head of the Secret Service. During appropriations hearings in 1919, Palmer described Flynn as “the great anarchist expert in the United States.”<sup>73</sup> With these leaders in place, Palmer also created a new division within the Bureau of Investigation to deal with the radical threat. Touting this division’s abilities to Congress, he sought to increase the Department’s appropriations to deal with the perceived increase in radical activities. When describing this division, however, Palmer made it clear that information would be gathered even if there was no suspicion that federal crimes had been committed.

In his 1919 report to Congress, Palmer made it clear that the Bureau’s wartime growth had to continue because of these new threats, which had to be dealt with in different ways, including by creating a new division to study the problem as a whole. Instead of the “investigation of individual violations of law, in the matter of the radical

<sup>71</sup> Ibid.

<sup>72</sup> United States Congress, House, Subcommittee of Committee on Appropriations, *Sundry Civil Bill, 1920. Second Hearing*. 66<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Washington, D.C.: United States Government Printing Office, 1919), 305.

<sup>73</sup> Ibid., 306.

situation [the Bureau] has consistently taken the attitude that intelligent investigations of individuals can be accomplished only by a thorough-going understanding of the situation as a whole.”<sup>74</sup> The newly created General Intelligence Division, Departmental officials conceded, did not result in “a large number of criminal prosecutions since the armistice by reason of the present state of permanent legislation on the subject.”<sup>75</sup> One year later, Attorney General Palmer still bemoaned the lack of federal legislation to address the radical threat, reporting to Congress that “there is a need of legislation which will enable the Federal Government to adequately defend and protect itself and its institutions through criminal prosecutions of not only aliens...but also of American citizens who seek to injure or destroy the Government by force or violence.”<sup>76</sup> Congressman Davis of Tennessee brought this message to his House colleagues in December, telling them that “the Attorney General has several times advised Congress of the urgent and immediate need of additional laws.”<sup>77</sup> The Senate, however, had earlier passed a resolution, on October 17, 1919, soliciting information from Palmer about his department’s actions against radicals. Palmer informed the Senate that he had already “appeared before the Judiciary Committee...and outlined the conditions that confronted us.” He then “recommended that legislation be passed which would make sedition and seditious utterances and publications a crime.... Such legislation has never been enacted by Congress.”<sup>78</sup> While Palmer was lobbying for peacetime legislation that could be used

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<sup>74</sup> United States Department of Justice, *Annual Report of the Attorney General of the United States for the Year 1919* (Washington, D.C.: United States Government Printing Office, 1919), 13.

<sup>75</sup> Ibid.

<sup>76</sup> United States Department of Justice, *Annual Report of the Attorney General of the United States for the Year 1920* (Washington, D.C.: United States Government Printing Office, 1920), 174.

<sup>77</sup> *Congressional Record v. 59* (66<sup>th</sup> Cong., 2<sup>nd</sup> Sess: 1 December 1919-5 June 1920), 992.

<sup>78</sup> United States Department of Justice, *Investigation Activities of the Department of Justice. Letter From the Attorney General Transmitting in Response to a Senate Resolution of October 17, 1919, a Report on the Activities of the Bureau of Investigation of the Department of Justice Against Persons Advising Anarchy*,

against radicals, Justice Department officials were also pushing for greater appropriations to combat this new threat. Congress debated this appropriations request and eventually gave Palmer less than he had requested.

Schmidt offers the fullest examination of the Department of Justice's appropriations initiatives of 1919 through 1922, concluding that Palmer's Red Scare was only financed after repeated visits to Congress, confirming that "the people's representatives were somewhat reluctant to finance the Red Scare."<sup>79</sup> Lowenthal similarly concluded that "at all stages of the bombing investigation, from the moment it came alive and became the biggest thing in the Bureau's life, through all the later periods when the search was never permitted to lag, the detective force had to get a great deal of money. It began asking Congress for increased appropriations on June 13, 1919, eleven days after the first bombs exploded."<sup>80</sup> This conclusion was shared by Frank Donner, who claimed the Bureau of Investigation overcame the "lack of an authorized function" for counterintelligence through budgetary review. "As long as congressional appropriations committees could be persuaded to grant money for intelligence activities," Donner argued, "that was all that mattered. Congress could either be deceived about the real purpose of the expenditures, co-opted as a partner, or frightened into silence by predictions of revolution."<sup>81</sup> In testimony before the House Appropriations Committee, Attorney General Palmer requested that Congress "not cut this appropriation down, even if you think it is too big.... We must let these people know that we mean business."<sup>82</sup>

*Sedition, and the Forcible Overthrow of the Government. November 17, 1919. Senate Doc. No. 153* (Washington, D.C.: United States Government Printing Office, 1919), 8.

<sup>79</sup> Schmidt, 152. The discussion of financing the Red Scare occurs from pages 152 to page 158.

<sup>80</sup> Lowenthal, 75.

<sup>81</sup> Donner, 44.

<sup>82</sup> US Congress, House, Subcommittee of Committee on Appropriations, *Sundry Civil Bill, 1920. Second Hearing*. 66<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Washington, D.C.: United States Government Printing Office, 1919), 305.

Congressman Vare responded by asking Palmer if “the moral effect of a large appropriation will have considerable value at this time.” Palmer responded that such an appropriation would “show these men that we are going to go to the limit.”<sup>83</sup> The House Appropriations Committee, however, rejected Palmer’s \$2,000,000 request, even after Palmer “claimed to have confidential information on the imminent outbreak of the revolution.”<sup>84</sup> Congress instead appropriated \$1,400,000, \$600,000 less than Palmer had requested.

Francis Garvan, the Bureau’s supervisor, also testified before the Senate Appropriations Committee, requesting \$500,000 in a supplemental appropriation. This money, Garvan contended, was needed “for the reorganization of the Bureau, to make up for the loss of the other intelligence agencies, and the ‘quite serious’ conditions throughout the country regarding ’anarchism and Bolshevism.’”<sup>85</sup> Senator Reed Smoot challenged Garvan, asking, “Do you think, if we increased this [appropriation] to \$2,000,000 you could discover one bomb thrower—get just one?”<sup>86</sup> In response to another question from a committee member, Garvan attributed the lack of arrests in these cases to another executive agency. Because Congress had not passed effective laws to prosecute United States citizens, most of the Department’s efforts had to focus on immigrants, the responsibility of the Department of Labor. Despite these arguments, Congress once again lowered the Department’s request from \$2,000,000 to \$1,400,000. Schmidt attributed this decrease to “the apparent skepticism of Congress and, possibly,

<sup>83</sup> Ibid..

<sup>84</sup> Schmidt, 152. Palmer told the Committee that “it has almost come to be accepted as a fact that on a certain day in the future, which we have been advised of, there will be another serious and probably much larger effort of the same character which the wild fellows of this movement describe as revolution, a proposition to rise up and destroy the Government in one fell swoop.” See United States Congress, House, Subcommittee of Committee on Appropriations, *Sundry Civil Bill, 1920. Second Hearing*. 304.

<sup>85</sup> Schmidt, 153.

<sup>86</sup> *Civil Appropriations Bill, 1920. Hearings*, 7-8.

the reluctance of the Republicans” who controlled the appropriations committee.<sup>87</sup>

Palmer once again returned to Congress in August, requesting an additional \$1,000,000 to cover an expected deficiency, and citing his department’s “intimations that there will be general outbreaks of a similar character at some dates in the future which have been given to us. It is necessary for us to follow those intimations out and watch these people with great care.”<sup>88</sup> For fiscal year 1919 (July 1919 to June 1920), therefore, Palmer ended up with a final appropriation of \$2,725,000. The Senate Appropriations Committee had invariably resisted Palmer’s original requests but eventually relented. Schmidt attributed this reluctance to the Republican-controlled committee’s desire to protect their position and not place the Democratic administration as “the savior of the nation against the Communists.”<sup>89</sup> One of those Republicans, Congressman Joseph Walsh of Massachusetts, contended that he would support the supplemental appropriation of \$500,000 because of Flynn’s credentials.<sup>90</sup> Even with this increased appropriation, questions surrounded the activities of the Department of Justice. Some congressmen questioned the ability of the Department’s agents to catch these “bomb-throwers,” no matter how much money was appropriated. Others defended Congress’s actions, pointing out that Palmer would just continue requesting more money until it was granted.

During House debate on this appropriation, Congressman Joseph Moore, a Republican from Pennsylvania, stated that “the most amazing thing on earth is that in a great country like this...it is impossible to trace out the men who issued or printed the circulars handed out by the Reds, or to find the man or men who make bombs.... Is there

<sup>87</sup> Schmidt, 153.

<sup>88</sup> US Congress, House, Subcommittee of Committee on Appropriations, *First Deficiency Appropriation Bill Fiscal Year 1920. Hearings*. 458.

<sup>89</sup> Schmidt, 153.

<sup>90</sup> *Congressional Record* v. 58, 1510.

any lack of interest on the part of Congress? Have we failed to make an appropriation sufficient to enable the Attorney General...to go forward and trace out these crimes? I think no criticism can be laid at the door of Congress in that regard.”<sup>91</sup> In response, Congressman Joseph Byrns, a Democrat from Tennessee, claimed that “the Attorney General in the appointment of Mr. Garvan, and in their joint selection of Mr. Flynn, has chosen the best men available in this country for that particular work.... It has struck terror into the hearts of the criminals of this country.... I regret that this appropriation does not carry more. I believe that all of us would like to see the fullest possible amount appropriated, but I know that if the Attorney General has not sufficient money to carry out this work he will only have to come back to Congress and get it. I want to see the alien anarchists in this country deported.”<sup>92</sup> Even when some congressmen questioned the appropriation, others replied that the Attorney General should receive all necessary funding to secure the radicals’ deportation. Congressmen Byrns specifically advanced the Democratic administration’s take, while Moore attempted to demonstrate the Republicans’ strong anti-anarchist stance, claiming the only reason Palmer was not doing more was because Garvan and Flynn were “preoccupied...in other lines of business.”<sup>93</sup> With postwar anti-radical hysteria at its peak, Palmer and officials in the General Intelligence Division acted in the only way they felt appropriate. Teaming with the Department of Labor’s Immigration Division, Department of Justice officials orchestrated a series of raids against alien radicals in November 1919 and January 1920. Led by J. Edgar Hoover, these raids proved to be counterproductive, causing serious damage to the Department’s reputation with several congressional committees and

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid., 1517. Upon concluding his speech, Congressman Byrns received applause.

<sup>93</sup> Ibid., 1510.

prompting investigations that focused the alleged abuse of detainees. As with the case of the earlier “slacker raids,” these investigations did not bring about greater congressional oversight of the Bureau of Investigation. By 1924, the committee’s critical findings were overshadowed by the publicized wrongdoings of Attorney General Daugherty and the related scandals of the Harding administration.

Attorney General Palmer created the General Intelligence Division on August 1, 1919, with J. Edgar Hoover as its chief. He charged this division “to handle the investigations connected with the ultraradical activities in the United States...collecting evidence and data upon the revolutionary and ultraradical movement for use in such proceedings as might be instituted against individuals or organizations involved in the same.”<sup>94</sup> From its inception, this division focused on ideas and not actions. A card-index system was created that not only listed individuals, but also “organizations, associations, societies, publications, and special conditions.” The index allowed the division “to determine and ascertain in a few moments the numerous ramifications of individuals connected with the ultraradical movement and their activities in the United States.”<sup>95</sup> As in the case of the attorney general’s earlier complaints, this division cited the inadequate legislation for dealing with radicals. In his report to Congress in 1920, Attorney General Palmer emphasized that, because Congress had not passed appropriate legislation, this division “centered upon the activities of alien agitators, with the object of securing deportation [of these aliens].... Close cooperation was established between this division and the office of the Commissioner General of Immigration, resulting in the arrest and

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<sup>94</sup> United States Department of Justice, *Annual Report of the Attorney General of the United States for the Year 1920* (Washington, D.C.: United States Government Printing Office, 1920), 172-173.

<sup>95</sup> *Ibid.*, 173.

ultimate deportation of some of the leading anarchists in the United States.”<sup>96</sup> This report also praised the raids of November 1919 and January 1920 as successful attacks against radical leaders throughout America. Congress would soon investigate these raids, challenging their legality and effectiveness. The resultant controversy did not usher in more lasting oversight of the Bureau, as members of Congress became distracted by other issues. Congress’s inaction enabled Bureau officials to craft their own reforms in 1924, which failed to address the underlying problem of politically motivated surveillance.

The attorney general’s report on the November 1919 raids claimed that the General Intelligence Division’s attention “was directed particularly to the activities of the Union of Russian Workers..., an organization in which the members dedicated themselves to the carrying out of anarchistical ideas and tactics.” In conjunction with the Department of Labor, 300 leaders of the union were arrested in eleven American cities.<sup>97</sup> Highlighting this work, the attorney general extolled the deportation of two high-profile anarchists, Emma Goldman and Alexander Berkman. However, Palmer lamented that, at that moment, the only effective means available to address this anarchistic problem was for the Department to cooperate with the Department of Labor to deport alien radicals. When the Senate passed a resolution in October requesting information from Palmer about his actions against radicalism, he responded by attributing this cooperation to Congress’s inaction. “Under the existing conditions of our laws,” he emphasized, deportation was “the only means at my disposal of attacking the radical movement and, as Congress had seen fit to refuse appropriations to the Department of Labor for its

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<sup>96</sup> Ibid., 174.

<sup>97</sup> Ibid.

enforcement, I have cooperated with the immigration officials to the fullest extent.”<sup>98</sup>

Palmer had hedged his stance from the very beginning, justifying the strategy of working with the Department of Labor as due to the department’s lack of legal jurisdiction over immigration (as no laws were in place to deal with radicals). At the same time, Labor lacked the funding to enforce immigration laws, enabling the Department of Justice to strike at radicals. In this report to the Senate, Palmer advised, “Detailed instructions were immediately issued to all agents of my department, setting forth the requirements necessary to satisfy the Immigration Bureau in a deportation case.... Under the immigration law each deportation case must be established and proved as in any criminal prosecution. The accused is entitled to hearings, to be admitted to bail, writs of habeas corpus, and to appeals even to our highest courts.”<sup>99</sup> Palmer’s report did not disclose how those hearings were conducted and the amount of bail. Even this resolution revealed the underlying motivation of members of Congress, as Senator Poindexter decried what he claimed underpinned congressional criticisms “as a continuation of the highly effective attack by the Republican Party against the Wilson administration during the midterm elections in 1918.... [This Republican strategy] consisted basically of questioning the patriotism of the Democrats by hinting that the administration was using the wartime emergency to introduce state planning of the economy.... A recurring theme of much of the Republican rhetoric was that the administration was sympathetic to and even

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<sup>98</sup> United States Department of Justice, *Investigation Activities of the Department of Justice. Letter From the Attorney General Transmitting in Response to a Senate Resolution of October 17, 1919, a Report on the Activities of the Bureau of Investigation of the Department of Justice Against Persons Advising Anarchy, Sedition, and the Forceable Overthrow of the Government. November 17, 1919. Senate Doc. No. 153* (Washington, D.C.: United States Government Printing Office, 1919), 10. Hereafter, *Letter from the Attorney General*.

<sup>99</sup> *Ibid.*

infiltrated by socialists and Bolsheviks.”<sup>100</sup> Palmer responded to these criticisms by depicting himself as the nation’s savior and then, when faced with criticism from Congress, claiming he acted in response to national hysteria.<sup>101</sup> In part in response to Congress’s criticisms, Palmer implemented an even more ambitious anti-radical plan that proved to be counterproductive as his actions raised new issues for Congress to debate. In the wake of the November raids, prominent congressmen advocated further legislation that would authorize the Department of Justice to expel radicals from the United States. This initiative was soon aborted. Instead, after the January raids, congressmen condemned the Department for having overstepped its authority. The resultant debates and congressional hearings examining the conduct of the so-called Palmer Raids ultimately produced no concrete conclusions about their propriety and Congress’s responsibility to establish the parameters of the Bureau’s role.

Members of the House first debated the November raids on December 20, 1919. Congressman Isaac Siegel, a Republican from New York, commented on a bill aimed “to overcome the difference of opinion which exists between the Department of Justice and Department of Labor as to what persons can be deported under the present law. My own opinion is and has been that under the present law you can deport from this country every person who is opposed to our form of government, and under its provisions 240 creatures are being prepared to leave America within the next 24 hours—to be gotten away from here for all time, I hope.”<sup>102</sup> Siegal’s principal complaint centered on the lack of action of the Department of Labor, which, by not acting quickly enough to deport those arrested,

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<sup>100</sup> Schmidt, 238.

<sup>101</sup> Schmidt, 245.

<sup>102</sup> *Congressional Record* v. 59, 983.

was allowing radicalism to continue to grow.<sup>103</sup> After discussing the lack of immigration enforcement, Siegel challenged the Judiciary Committee to write a law to authorize prosecution of anarchist citizens.

Siegel continued his fiery denunciation of the Department of Labor by citing the lack of legislation directed at citizens who aided anarchistic causes. This was “not a partisan question,” he argued. “This is an American question.”<sup>104</sup> He then praised the Judiciary Committee’s determination to correct this problem by enacting laws to protect Americans from those who would do it harm, whether native- or foreign-born.<sup>105</sup> To ferret out these radicals, Siegel urged other states to enact anti-syndicalist laws similar to those in New York. Other congressmen followed Siegel to floor, parroting his call for greater action by the Department of Labor and the removal of the restrictions holding back the Department of Justice.

In a slightly different manner, Congressman Benjamin Welty, a Democrat from Ohio, criticized the Department of Labor for not having proceeded quickly enough against alien radicals. He attributed this, however, to the fact that the deportation laws were “exceedingly crude and out of date.” Congress had appropriated funds to the Department of Justice to investigate radical aliens, but it had not appropriated funds for the Department of Labor to actually deport those aliens. Instead, Justice’s information was being wasted because its agents could not initiate deportation hearings.<sup>106</sup> Welty urged his House colleagues to rectify the problem by amending the law to require the Department of Justice to file information with the Department of Labor, which could then

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<sup>103</sup> Ibid., 983, 985.

<sup>104</sup> Ibid., 985.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., 986.

“issue a warrant, hear the evidence submitted,” and the punish guilty aliens.<sup>107</sup> Welty blamed this on the Department of Labor, but only because current law did not allow for proper collaboration between Justice and Labor. Updating the deportation laws, Welty argued, would decrease radicalism. Welty continued his argument by blaming immigrants themselves for the current problem and demanding the registration of all aliens. Those immigrants who appreciated America’s form of government would gladly do so.<sup>108</sup> Other representatives agreed that immigration was the problem, that only by stemming the flow of people to the United States would the country again be safe.<sup>109</sup>

When concluding this debate over the need for additional anti-radical legislation, Representative Erwin Davis commended “the Department of Justice [for] faithfully endeavoring to meet the situation, but the Attorney General has several times advised Congress of the urgent and immediate need of additional laws.... [as] the espionage act and the trading-with-the-enemy act, under which they have in part been held in check, were essentially war measures.”<sup>110</sup> The end of the war meant that the Department of Justice could no longer use wartime measures to combat radicalism. New laws were required, and in his October communication with the Senate, Palmer proposed one such law to correct this situation.<sup>111</sup> “Under the existing laws,” Davis continued, “it is very difficult, and generally impossible, to obtain the deportation or conviction of these radicals, even when the evidence is procured and their arrest effected.”<sup>112</sup> In the end, Davis argued, radicalism was a movement of “criminals, moral perverts, social bigots and

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<sup>107</sup> Ibid.

<sup>108</sup> Ibid., 989.

<sup>109</sup> Ibid., 990.

<sup>110</sup> Ibid., 992.

<sup>111</sup> *Letter From the Attorney General Exhibit 1.*

<sup>112</sup> *Congressional Record v. 59*, 992.

false idealists" who were "avowedly seeking the destruction of all religion and belief in God, the destruction of government and law, the destruction of the sacred ties of marriage and home, the destruction of the ownership of property."<sup>113</sup> Such evils could only be combated by "enact[ing] such laws and tak[ing] such steps as may be necessary to effectively rid this country of the curse of anarchy, bolshevism, I.W.Wism, sovietism, sabotage, sedition, treason, and all similar radicalisms, by whatever name or in whatever form it rears its sinister head."<sup>114</sup>

None of the proposed bills requested by Attorney General Palmer to combat citizen radicals passed. Nonetheless, Justice Department officials continued to deport aliens with the aid of the Department of Labor. In the wake of the January 2, 1920 raids against the Communist Party and the Communist Labor Party, the House of Representatives returned to this issue and once again debated the efforts of the Department of Justice and the Department of Labor. These debates, however, proved to be far more partisan, with Democrats decrying the actions of Assistant Secretary of Labor Louis Post, while Republicans focused on the actions of Palmer. These raids ultimately led several House committees to launch investigations of both Post and Palmer. While thorough, these investigations did not produce any actions to control the growth of the Department of Justice or address the problems of its abusive efforts to combat radical political thought.

The January raids ironically had created new problems for some Department of Justice officials. The chief of the General Intelligence Division, J. Edgar Hoover, had convinced responsible officials in the Department of Labor that those arrested for

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

possible deportation did not have the right to an attorney during questioning. This procedure enabled Bureau agents to extract confessions and thereby produce the needed evidence to justify the deportation of a suspect. Four weeks after the execution of the January raids, however, Department of Labor officials reinstated the original rule that suspects had the right to a lawyer during deportation proceedings. Assistant Secretary of Labor Louis Post subsequently rejecting thousands of confessions. Post also overturned thousands of deportation orders on the grounds that the mere listing of an arrested alien as a member of the Communist Party was not enough to show intent to overthrow the government. To Post, many immigrants had either joined the proscribed organizations for social reasons, their membership had been automatically transferred from the Socialist Party, or they were not fully aware of the change in the positions of these now-proscribed organizations. As these deportations were challenged in courts along the East Coast, senior Justice Department officials responded angrily. Turning to their supporters in the House, they called to impeach Assistant Secretary Post over how he had performed his duties to supervise deportation decisions.

On April 14, 1920, the House began its review of the January raids and the actions taken by Post in their wake as a prelude to considering a resolution to impeach Post. Representative Martin Davey, a Democrat from Ohio, began by discussing the House's inaction. He lamented that "ever since last June the Attorney General of the United States has been asking for a law to deal with these agents of revolution. He appeared before a committee of the Senate last June and asked for a law to reach the enemies of this Government, those who would destroy it by force."<sup>115</sup> Since no such law had been passed, the attorney general had to rely on the Department of Labor's authority

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<sup>115</sup> Ibid., 5670.

to enforce immigration laws. That faith, according to Davey, had been misplaced. He decried Post's actions in rescinding deportation rulings as "one of the saddest things in the history of the last few months of our Government." Post served "a Democratic administration, in a Democratic department" but Davey was not indicting the party. Instead, he felt Post's "sympathies evidently are with the enemies of our Government."<sup>116</sup> Both sides of the House applauded, and Republican members began to question Davey's intentions.

William Andrews, a Republican from Nebraska, thereupon asked Davey if it "would be a wise thing to remove Mr. Post from his position that he has treated in that manner?" Davey responded that should Mr. Andrews "start something, I will be with you on it." Another Republican, Israel Foster, thereupon asked Davey, "Why do you not start it?" Davey replied that he did "not control the processes of this House. If I were on the Republican side I would start it mighty quick." Asked by Andrews, "What course of procedure would the gentleman suggest?" Davey replied he would impeach Post. Andrews then asked if he "would...introduce the resolution?" Davey finally responded that he was "perfectly willing," receiving applause from the floor.<sup>117</sup> Having exploited the Democrats' lack of action against radicals to harm the Wilson administration in 1918, Republicans planned a similar tactic in the 1920 elections. By May, however, the Republicans began to criticize Palmer's actions during these raids as having exceeded his authority and, after hearings held in late April, defended Assistant Secretary Post.

In his March 1920 testimony on departmental appropriations before the House Appropriations Subcommittee for fiscal year 1922, Palmer encountered this charged

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<sup>116</sup> Ibid., 5671.

<sup>117</sup> Ibid., 5671.

partisan atmosphere as the subcommittee reduced Palmer's requested appropriation by \$500,000. Schmidt attributed the reduction to "the Republican majority want[ing] to embarrass the Democratic administration by playing on the conflict between the Justice and Labor Departments about the administration of the deportation laws."<sup>118</sup> As the Republican subcommittee chairman, James W. Good, reported, the subcommittee "did not believe it was a wise expenditure to make, that is, to have the Department of Justice arrest a man who was guilty and after he was proven guilty have another department turn him loose, which had a tendency to make him more of an anarchist than he was before."<sup>119</sup> During the floor debate on this appropriation, Democratic members of the committee defended the Department of Justice and offered an amendment to raise the total to Palmer's original request of \$2,500,000.<sup>120</sup> The debate over this amendment highlighted this conflict between Republicans and Democrats. Democrats supported the Department of Justice's higher request, while Republicans argued it put money in the wrong hands; if the Department of Labor ran deportation hearings, it should receive the necessary funding.

Palmer's most vocal House critic was Representative John MacCrate, a Republican from New York. He argued that "no radical leader in this generation has done more to unsettle the nerves of the American people than has the Attorney General. He has awakened class antagonism to greater pitch than any preacher of class warfare. He borrows the bitterest terms of denunciation and hurls them indiscriminately here and

<sup>118</sup> Schmidt, 155.

<sup>119</sup> US Congress, House, Subcommittee of Committee on Appropriations, *Sundry Civil Appropriation Bill*, 1922, 66<sup>th</sup> Cong., 3rd. Sess. (Washington, D.C.: United States Government Printing Office, 1920), 1148-1149.

<sup>120</sup> *Congressional Record* v. 59, 6830. The amendment was offered by Representative Joseph Byrns, a Democrat from Tennessee.

there and elsewhere at portions of our people. Whenever the country seems ready to settle down and the national nerves are about normal, he breaks out, crying, 'The Republic is endangered.'"<sup>121</sup> "It is a strange sight," he continued, "to witness an Attorney General crying for convictions on wrath and not on evidence. Have constitutional guaranties become so obsolete that impartial justice is an impossibility for our citizens? Is suspicion to supplant facts in the conduct of the affairs of government?"<sup>122</sup>

In response, Democrat Thomas Blanton challenged MacCrate's version of events, asking if he knew "that within the last 90 days the Attorney General has apprehended about 6,000 anarchists and that just the other day Louis F. Post, Assistant Secretary of Labor, testified before the Committee on Rules that he used to be a loyal Republican, yet the country knows he has turned most of these 6,000 anarchists loose on the people of America? Louis F. Post, and not the Attorney General of the United States, is wholly responsible for the law not being applied to the infamous anarchists now menacing the United States."<sup>123</sup> MacCrate responded with a cutting barb, decrying the hysteria that Palmer had created when he predicted that several bombs would explode on May 1, 1920. When that day ended with no bombs, the Republicans condemned Palmer for stirring up fear to aid his presumed presidential candidacy. MacCrate sarcastically commented that "if those 6,000 exist in the same place that the bomb throwers of May 1 existed, there are not any," a remark eliciting applause from House Republicans. This debate concluded with a Democratic representative asking for support for Attorney General Palmer, blaming Congress for the ineffective attack against radicalism. Representative Thomas McKeown, a Democrat from Oklahoma, defended Palmer as "a fearless officer" who,

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<sup>121</sup> Ibid., 6831.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid., 6832.

because of the bomb that exploded on the doorstep, deserved Congress's support.<sup>124</sup> "It is the duty of the Attorney General to execute the law," he pointed out, "and it is the duty of Congress to pass sufficient laws and give him enough money with which to enforce the law and not criticize him."<sup>125</sup> Their framing the debate about the Department of Justice's appropriation (both congressional supporters and critics of Palmer's actions) made it difficult to mobilize support to investigate Palmer's actions. Congress did eventually launch inquiries into the January raids. The impetus for these investigations ironically came from the attempt to impeach Assistant Secretary of Labor Post for his decision to cancel thousands of deportation orders.

Just two weeks after the House began debating the 1921 appropriation for the Department of Justice, the House Committee on Rules began hearing testimony regarding Louis Post's actions. On April 27, 1920, Chairman Philip P. Campbell, a Republican from Kansas, opened these hearings. Spurred by a House resolution sponsored by fellow Kansan Homer Hoch, the committee, run by Republicans, heard from key witnesses. At the outset, the Republican Congressmen planned to use Post's decision to indict the Wilson administration. Following Post's able defense of his actions, however, the Republicans saw an opportunity to question the presumed leading Democratic candidate for president in 1920, Attorney General Palmer. Their intent to exploit the radical issue to damage the Democratic presidential aspirant and his potential replacements transformed a debate about radicalism into a potentially successful political strategy, as reflected in the altered Republican tone in the *Congressional Record* from late April to mid-May.

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<sup>124</sup> Ibid., 6833.

<sup>125</sup> Ibid.

Congressman Albert Johnson, the Republican chair of the Immigration Committee, set the tone for these hearings by decrying the administration's inaction against radicals. The public, he charged, was "seeing its laws violated by public officials in behalf of aliens who have contempt for this Government.... Neither these aliens nor their revolutionary notions are needed in the United States, and if necessary Congress should clean out any executive department that encourages these aliens or indorses their ideas. Personally I cannot believe that Secretary [of Labor William B.] Wilson knows what sort of boring from within is going on within his department, and I do not believe President Wilson knows of the situation and its dangers."<sup>126</sup>

Another Republican congressman, Homer Hoch of Kansas, authored the resolution to initiate hearings into Post's impeachment. There was, he contended, "no political or partisan consideration.... To my way of seeing this, the issues involved are far above any partisan considerations. There should be only one purpose in connection with this whole matter, and that is to get at the bottom of the facts whatever they are."<sup>127</sup> He claimed that his intent was merely to follow up on charges made on the congressional floor. He desired only to see whether Post, "by his attitude toward the law and by his action in specific cases, has virtually nullified the law against alien reds and anarchists."<sup>128</sup> Another representative argued that "Mr. Caminetti and the Bureau of Immigration are making a faithful effort to enforce the law as they find it; that the Attorney General is trying to do the same thing; that the Assistant Secretary of Labor is entirely out of sympathy with the law, has contempt for it, and is not such a man as ought

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<sup>126</sup> US Congress, House, Committee on Rules, *Investigation of Administration of Louis F. Post, Assistant Secretary of Labor, in the Matter of Deportation of Aliens. Hearings*, 66th. Cong., 2nd. Sess. (Washington, D.C.: United States Government Printing Office, 1920), 5. Hereafter, *Investigation of Post*.

<sup>127</sup> Ibid., 6.

<sup>128</sup> Ibid.

to administer it.<sup>129</sup> Defending his own actions during his testimony before the Rules Committee, Post and his attorney, Jackson Ralston, eloquently showed that the Department of Justice and Immigration Commissioner Caminetti had overstepped their authority. It became apparent to Rules Committee members that Post could not be impeached, and they shifted their focus to Palmer's actions.

Louis Post had assumed command of the Department of Labor's deportation proceedings when Secretary of Labor William Wilson took a leave of absence due to illness and Acting Secretary John Abercrombie resigned. From March 6 to April 14, then, Post was "in a position to re-establish control of the deportation process."<sup>130</sup> Under Post's leadership, the Department of Labor finally examined the cases of those arrested during the January raids. It was "under Post's influence [that] the Department [of Labor] now insisted on conformity with due process and factual proof of illegal advocacy as a prerequisite [for deportation]."<sup>131</sup> According to Frank Donner, this clash between Post and the Attorney General taught J. Edgar Hoover "the vital importance of developing a congressional base."<sup>132</sup> As Post began to reassert control over the immigration process, his testimony began to sway the committee.

Post began his testimony before the Rules Committee on May 7. He directly rebutted the claim that the raids had been necessary to protect America from imminent revolution, pointing out that "with all these sweeping raids over the country, there have been three pistols, I think it is, brought to our attention in the scores of cases that have

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<sup>129</sup> Ibid., 54-55.

<sup>130</sup> Schmidt, 302.

<sup>131</sup> Donner, 39.

<sup>132</sup> Donner, 39.

come to us.”<sup>133</sup> He then challenged the notion, articulated by both Congress and the Attorney General, that any member of the Communist Labor Party should be automatically deported.<sup>134</sup> Many of those held for deportation, Post maintained, were merely “going to school or going to a social club of men from their own country and of their own speech.”<sup>135</sup> These men posed no threat to the United States; they were merely searching for a place to socialize with others from their home country. As acting secretary, Post alone could determine the fate of these cases. The Department of Justice and even the immigration commissioner could only make recommendations; it was the Secretary of Labor’s function, “and his function alone, to pass judgment upon each individual case.... I wish to emphasize this because it is the law.”<sup>136</sup> When asked whether the Department of Justice had any authority to enforce deportation laws, Post responded “Not in the slightest.... We have given warrants to representatives of the Department of Justice because we have not the force to execute this great number of warrants that were asked for by the Department of Justice under its appropriation for that purpose, but we have nothing to do with a case until we issue a warrant and the Department of Justice has nothing to do with a case after a warrant is issued.”<sup>137</sup> Post’s forceful defense of his actions, and his depiction of the actions of the Department of Justice as excessive and unlawful, successfully persuaded committee members that Palmer’s efforts needed further investigation. The rules committee thereupon offered Palmer a chance to defend his actions during hearings that began on June 1, 1920.

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<sup>133</sup> *Investigation of Post*, 71.

<sup>134</sup> Ibid., 73.

<sup>135</sup> Ibid., 71.

<sup>136</sup> Ibid., 155.

<sup>137</sup> Ibid., 240.

In his appearance before the House Rules Committee, Attorney General Palmer defended himself with what by then were familiar tactics. He redirected blame to the Department of Labor and portrayed American society as at imminent risk. “Mr. Post’s course in all the deportation proceedings,” he contended, “has been dictated by his own personal view that the deportation law is wrong, rather than by any desire or intention to carry out the law as enacted by Congress. By his self-willed and autocratic substitution of his mistaken personal viewpoint for the obligation of public law; by his habitually tender solicitude for social revolutionists and perverted sympathy for the criminal anarchists of the country, he has consistently deprived the people of their day in court in the enforcement of a law of vital importance to their peace and safety.”<sup>138</sup> He reiterated that he “looked upon this deportation statute not as a mere matter of punishing, by sending out of the country a few criminals or mistaken ultraradicals who preach dangerous doctrines, but rather as a campaign against—and I have felt that was the purpose of the country—a growing revolutionary movement which sought by force and violence to undermine and injure, and possibly destroy, our Government.”<sup>139</sup> Palmer’s forceful attempt to make the case that these radicals threatened America was intended to portray Post as complicit in allowing radical ideas to stain society, Palmer purposefully sought to put the committee into a mindset that would prove his point. Palmer’s portrayal of the charges against himself as “a part of the studied propaganda of the ultra-radical revolutionist in America” effectively cast himself as the defender of the nation, beset on all sides by opponents eager to see him fall.<sup>140</sup>

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<sup>138</sup> Ibid., 6.

<sup>139</sup> Ibid., 14.

<sup>140</sup> Ibid., 35.

Palmer also employed this tactic to discredit the charges that were brought against his actions by the *Report Upon the Illegal Practices of the United States Department of Justice*, a pamphlet authored by 12 lawyers for the National Popular Government League. Just as he had with Secretary Post, Palmer questioned the motives of these “gentlemen said to be lawyers.”<sup>141</sup> He conceded that he did “not know all of these gentlemen. Such of them as I do know I am not much impressed by, but I am entirely satisfied that if they be reputable lawyers they have either been woefully deceived or have deliberately declared their political convictions rather than their judgment as reasoning men upon the facts presented.”<sup>142</sup> These lawyers had taken the word of aliens and not the sworn statements of members of the Department of Justice, Palmer continued, adding that he preferred to take “the sworn testimony of these splendid men, these real Americans, who...have been brought into the Secret Service of the Department of Justice, rather than the statements of these aliens facing the punishment that they fear most in life—deportation to the country from which they came.”<sup>143</sup> Palmer found even more questionable these lawyers’ connection with radicalism itself: “Three or four of them,” he told the committee, “have appeared as counsel for the Communist Labor Party at the hearings before the Secretary of Labor, apparently, although we find the Communist Labor Party repudiating their appearance and declaring that they did not represent the party as counsel, which indicates pretty clearly that they were there because they believed in the communist ideas and desired to defend them everywhere.”<sup>144</sup> One ironic result of these hearings was to destroy

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<sup>141</sup> Ibid., 73.

<sup>142</sup> Ibid., 73-74.

<sup>143</sup> Ibid., 74.

<sup>144</sup> US Congress, House, Committee on Rules, *Attorney General Palmer on Charges Made Against the Department of Justice by Louis F. Post and Others. Hearings*, 66th. Cong., 2nd. Sess., Part 1 (Washington, D.C.: United States Government Printing Office), 75. Hereafter, *Palmer on Charges*.

Palmer's chances to secure the Democratic nomination for president in 1920. Republican Congressmen would now use these events to paint Palmer as power-hungry, a striking reversal from their initial criticism of Post. The House's hearings into the Palmer-Post feud revealed an underlying political calculus, as Republicans, seeking to gain control of Congress and the presidency, criticized the Wilson administration first with laxity and then with overzealousness. Their success at undermining Palmer's presidential candidacy effectively neutralized a potential adversary in the 1920 election. During the lame-duck portion of Woodrow Wilson's presidency, the United States Senate Judiciary Committee also launched an investigation into the charges against Attorney General Palmer. Following Republican Warren Harding's election as president and the Republicans increased power in Congress, the stage was set for what proved to be the final congressional discussion of the Palmer Raids.

In January 1921, a Senate Judiciary Committee subcommittee launched an investigation into the charges brought against the Department of Justice by the National Popular Government League. Republican Thomas Sterling of South Dakota chaired the subcommittee, although the driving force behind the investigation was a Democrat from Montana, Senator Thomas Walsh. Lasting almost two months, the hearings produced no final report. Chairman Sterling utilized the hearings to illustrate the fear then permeating the nation, while Senator Walsh challenged Palmer's actions but ultimately fell short of calling for widespread reform of the Department of Justice.

As in the case of his testimony before the House Rules Committee, Palmer began by attacking the lawyers who questioned his actions. These lawyers, he charged, had "been acting as counsel for these communistic defendants and for the communistic party

in various litigated cases.”<sup>145</sup> Most of the statements taken by the lawyers, he continued, came from self-interested aliens who sought to avoid deportation, instead of the sworn statements of agents of the Bureau of Investigation.<sup>146</sup> Palmer, in addition, justified the arrests, claiming “there was on foot an intense revolutionary movement.”<sup>147</sup> He placed the arrests into the larger context of 1919, testifying that the “country had just passed through a steel strike and a coal strike of great magnitude, and in each of these strikes thousands of leaflets were distributed by the communist parties urging the workers to rise up and seize not only the shops in which they worked but also the Government, and stating to the workers that they must control the State power, the police, and the Army, and that the only way to control that was to rise in open combat against the constituted governing authority, using not parliamentary meetings but open mass action.”<sup>148</sup> Palmer concluded his defense of his actions by unequivocally telling the committee that “the emergency existed, and I consider that the action of the Department of Justice in moving deliberately and with thoroughness is fully warranted and justified.”<sup>149</sup> The emergency had hit close to home, as Palmer had been one target of a bomb, and he recalled that, “without a dissenting voice,” congressmen and senators “called upon me in strong terms to exercise all the power that was possible to the Department of Justice to run to earth the

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<sup>145</sup> US Congress, Senate, Subcommittee of the Committee on the Judiciary, *Charges of Illegal Practices of the Department of Justice. Hearings on “Report upon the Illegal Practices of the United States Department of Justice”, Made by a Committee of Lawyers on Behalf of the National Popular Government League, and a Memorandum Describing the Personnel of the Committee. Referred “for such Action as the Committee on the Judiciary May Care to Take with Reference to the Same.” January 19 to March 3, 1921*, 66th Cong., 3rd. Sess. (Washington, D.C.: United States Government Printing Office, 1921), 7. Hereafter, *Charges of Illegal Practices*.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*, 571,

<sup>148</sup> *Ibid.*, 572-573.

<sup>149</sup> *Ibid.*, 573.

criminals who were behind that kind of outrage.”<sup>150</sup> Palmer’s defense of his actions in these terms placed them in the context of the time, arguing he was prodded to act by a demanding Congress and a frightened public. Those who questioned the results were supporting the very people Americans wanted to see deported. Palmer urged the committee to “make your report, whatever it may be, so that this incident may be closed, so that the country may know what this great committee thinks of this entire procedure, and so that the Department of Justice may have a guide in the future for its conduct.”<sup>151</sup> As in the case of the House Rules Committee, the Senate Judiciary Committee issued no report. Political considerations dominated the committee’s deliberations as members were unable to agree on a unified statement.

At the conclusion of the hearings, Senator Walsh “prepared a strongly worded report on the Palmer Raids in which he accused the Bureau of having conducted the arrests and searches without any legal authority whatsoever and having violated the aliens’ constitutional rights when they were arrested either without any warrants or with warrants based only on Bureau agents’ unsworn affidavits.”<sup>152</sup> Conservative members of the Judiciary Committee, notably Senators Sterling, Overman, and Nelson, however, managed to delay Walsh’s report by avoiding committee meetings.<sup>153</sup> Finally, on February 5, 1923, Walsh disbanded the subcommittee and had his report and Senator Sterling’s report printed in the *Congressional Record*.

Senator Walsh’s report stated, “The Attorney General was in no ordinary frame of mind because of the dastardly effort, partially successful, to dynamite his house in the

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<sup>150</sup> Ibid., 580.

<sup>151</sup> Ibid., 582.

<sup>152</sup> Schmidt, 314.

<sup>153</sup> Schmidt, 314-315.

summer of 1919, and like attempts upon the lives of other public or prominent men.”<sup>154</sup>

To correct such abuses, Walsh recommended changes to the immigration statute to ensure that deportation of aliens “conform to the plain mandate of the Constitution.”<sup>155</sup>

Although having documented the illegalities of the deportation raids and hearings, Walsh did not propose any changes in the procedures of the Department of Justice. Instead, he simply placed the blame for the raids’ abuses at the feet of Attorney General Palmer.

In contrast, Senator Sterling defended the raids as “an aroused public” reacting to the “agitation and...acts of violence” of 1919.<sup>156</sup> The Department of Justice had been forced to act, in large part in response to the Senate’s unanimous passage of the Poindexter resolution that asked Palmer to report on his actions against the radical threat. These conditions “should have weight in determining whether the Department of Justice or the Attorney General was, under the circumstances, guilty of illegal practices which merit the public condemnation and censure of the Congress.”<sup>157</sup> Sterling’s proposed recommendations would merely clarify the relationship between the departments of Labor and Justice in enforcing immigration law and expanded the Bureau of Investigation’s authority “to make arrests and to cross-examine witnesses.”<sup>158</sup> In the end, Sterling’s report placed context over action, citing the fear present in 1919 as justification for the raids by forcing the Department of Justice to act swiftly and forcefully.

Senator Walsh responded to Sterling’s report by questioning the importance of the historical context. In fact, he argued, “It is only in such times that the guaranties of the

<sup>154</sup> *Congressional Record* v. 64 (67th. Cong., 2d. Sess: 5 December 1921-22 September 1922), 3014.

<sup>155</sup> Ibid., 3015.

<sup>156</sup> Ibid., 3017.

<sup>157</sup> Ibid., 3018.

<sup>158</sup> Schmidt, 316.

Constitution as to personal rights are of any practical value.”<sup>159</sup> He also began to modify his position of blaming Attorney General Palmer, arguing that Congress could not “ignore the matter on the assumption that the affair is a closed incident. The same practices, or others of like character, are being even now pursued by the department officials.”<sup>160</sup> These two reports marked the formal end to Congressional investigation into the Palmer Raids. Congress avoided enacting any laws proscribing the authority of the Bureau of Investigation. Instead, members of Congress assumed that a change in attorney general sufficed to prevent the recurrence of the department’s abusive practices. Instead of increasing Congressional oversight of the Department of Justice, members of Congress were contented with the enactment of stricter immigration laws, accepting “the Bureau’s political investigations as long as they were aimed at groups and persons outside the political consensus.”<sup>161</sup> Their trust that a new attorney general would successfully oversee the Bureau underlay Congress’s willingness to defer to the increasingly dominant executive branch. This trust proved to be misplaced, demonstrated by further disclosures of the rampant corruption of the Harding administration.

Harding’s inauguration in March 1921 led to the appointment of a new attorney general. A close friend of the president, Harry Daugherty “had been rewarded with his position because of his successful management of the campaign in 1920.”<sup>162</sup> One of Daugherty’s first actions as attorney general was to name a new director of the Bureau of Investigation. As Daugherty subsequently reported to Congress, “William J. Burns was appointed and...plans for a complete reorganization were adopted, and rapid progress has

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<sup>159</sup> *Congressional Record* v. 64, 3027.

<sup>160</sup> *Ibid.*, 3026.

<sup>161</sup> Schmidt, 317.

<sup>162</sup> Schmidt, 318.

been made toward the carrying out of the same. It is the intention to make the Bureau of Investigation of this department one of the most salient forces in the country in not only apprehending criminal elements but in acting as a preventive medium of crime.”<sup>163</sup> Burns had headed a private detective agency that “rivaled Pinkerton’s in its coverage of the radical, foreign-born, and labor worlds.”<sup>164</sup> Burns brought this attitude with him to the Department of Justice, elevating J. Edgar Hoover to Assistant Chief of the Bureau but still heading the General Intelligence Division. With these leaders in charge, the Bureau continued to monitor radicals, activities which Burns reported to Congress that the General Intelligence Division was still “carefully observing and following the trend of the ultraradical movement in the United States, including the activities of anarchists, communists, and syndicalists.”<sup>165</sup> Their leadership soon embroiled the Department of Justice in a series of scandals and led leading members of Congress to call for investigations of Daugherty’s inaction in the face of uncovered illegalities in the so-called Teapot Dome affair.

President Harding’s administration was rife with corruption, affecting many members of his Cabinet. Attorney General Daugherty, for example, was accused of selling government alcohol supplies during Prohibition and selling pardons. Secretary of the Interior Albert Fall, however, was the only Cabinet member who resigned in the face of his scandal. Fall convinced President Harding to transfer control of Navy oil reserves from the Navy to the Department of the Interior. Instead of opening bidding to a competitive process, Fall signed leases with two oil companies after, it was later

<sup>163</sup> United States Department of Justice, *Annual Report of the Attorney General of the United States for the Year 1921* (Washington, D.C.: United States Government Printing Office, 1921), 129.

<sup>164</sup> Donner, 42.

<sup>165</sup> *Annual Report of the Attorney General of the United States for the Year 1921*, 130.

discovered, being paid a substantial sum. Attorney General Daugherty, aware of the charges against Fall, never investigated his fellow Cabinet member. Throughout the scandals of the Harding administration, Daugherty actively sought to hamstring investigations by using Bureau agents to look into the backgrounds of the administration's enemies. By portraying Congressional investigations as partisan, Daugherty sought political cover. When they discovered Daugherty's use of Bureau agents for political reasons, members of Congress again failed to restrain future abuses of that agency. Instead, they convinced themselves that these abuses were not intrinsic to the Bureau's activities, but solely caused by corrupt officials. By replacing the official, the corruption would cease and, therefore, Congress did not need to refine the Bureau's mission through legislation.

As Max Lowenthal pointed out, the earliest efforts "to secure an effective Congressional investigation of the Department of Justice were unsuccessful."<sup>166</sup> Led by Republican congressman Oscar Keller of Minnesota, in 1922 the House debated a resolution to impeach Attorney General Daugherty. During the following hearings on Keller's resolution, the Republican leadership of the House Judiciary Committee effectively hamstrung action on Keller's proposal. They challenged Keller to offer concrete evidence before any investigation would be initiated.<sup>167</sup> Once the investigation began, Republican committee members did everything they could to shift the focus to the Department of Justice's critics.<sup>168</sup>

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<sup>166</sup> Lowenthal, 290.

<sup>167</sup> US Congress, House, *Charges of Hon. Oscar E. Keller Against the Attorney General of the United States. Hearings before the Committee on the Judiciary, House of Representatives* (Washington, D.C.: United States Government Printing Office, 1922), 5. Hereafter, *Charges of Keller*.

<sup>168</sup> Lowenthal, 290.

One of Keller's charges against Attorney General Daugherty was that he had appointed William Burns Bureau Director even after hearing accusations of Burns's jury tampering in a 1907 Oregon land-fraud case. Because of Burns's actions, President Taft had, at the time, issued a pardon based on the recommendation of Attorney General Wickersham. Then, when Daugherty announced his decision to install Burns as Director of the Bureau of Investigation, Samuel Gompers brought this past to the Daugherty's attention. Nonetheless, Keller pointed out, Daugherty still named Burns chief.<sup>169</sup>

Testifying before the committee, Gompers said he told Daugherty that "it would be a public scandal and would bring discredit to the department and to the Government of the United States if any such a man was appointed to such an important post as it was proposed to appoint Mr. Burns to, and I as a man and citizen, I protested against such appointment."<sup>170</sup> The committee's investigator, Mr. Howland, turned the hearing against Gompers by asking, "When did you suggest to Mr. Ralston, your attorney here, that these impeachment proceedings be started?"<sup>171</sup> By placing the blame for the hearings at the feet of Samuel Gompers, a man closely associated with radicals, and his lawyer, the same man who defended Louis Post, the Republican committee members effectively blocked any actions against Attorney General Daugherty. Committee members sought to bolster Burns's reputation by calling Senator Hiram Johnson, who had recommended Burns to Daugherty. Johnson told the committee that he "considered [Burns] one of the ablest detectives I had ever known; that I believed him to be a man of character and integrity; and that he would in every respect possess the requisite qualifications for the office to

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<sup>169</sup> *Charges of Keller*, 71-73.

<sup>170</sup> *Ibid.*, 173.

<sup>171</sup> *Ibid.*, 175.

which he aspired.”<sup>172</sup> When forced to choose between Gompers and their Senate colleague, the committee went with the latter. With the hearings turned against the Department’s critics, Keller’s resolution gathered no support and the matter was quietly dropped.

During the sixty-eighth Congress, however, a new voice raised charges against Attorney General Daugherty. A freshman senator from Montana, Burton Wheeler successfully pushed through a resolution to investigate the Department of Justice.<sup>173</sup> Wheeler charged that “instead of trying to detect the greatest crooks and those guilty of the greatest crimes against the Nation that have ever been perpetrated, we find the Department of Justice protecting them all.”<sup>174</sup> Resisting the charge that his investigation was partisan, Wheeler told the Senate “that this is not a question of Democratic or Republican politics. A veiled threat was held out over me to the effect that if a certain man testified, it would involve some Democrats as well as Republicans. I say to the Senators here to-night that it makes no difference to me whether there are Democrats involved or whether there are Republicans involved. The greatest duty we can perform is to show up the crooks, whether they are Republicans or whether they are Democrats.”<sup>175</sup> In response, Republican senators did not challenge Wheeler’s charges. Instead, they attacked his methods, especially his decision to name the investigatory committee himself. By using their control of the Senate, the Republican majority attempted to block Wheeler’s resolution through parliamentary regulations. In order to protect the Harding

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<sup>172</sup> Ibid., 221.

<sup>173</sup> Lowenthal, 290.

<sup>174</sup> *Congressional Record v. 65* (68th. Cong., 1st. Sess.: 3 December 1923-7 June 1924), 2770.

<sup>175</sup> Ibid.

administration, Senate Republicans tried to stymie Wheeler's call for an investigation before it could begin.

Wheeler's resolution noted that he was "naming...the Members of the Senate whom I desire to have investigate the Department of Justice. I appreciate that in doing this I am departing somewhat from the usual custom."<sup>176</sup> Having been informed by Senate Judiciary Committee members that they could not be sure when they could investigate Daugherty, and because Wheeler could not forge a compromise committee with Republican Frank Willis, he decided that "a real investigation" required that he select the committee himself.<sup>177</sup> Republican senators objected to this action. Senator Henry Cabot Lodge, a Republican from Massachusetts, protested that "never before, either under Democratic or Republican control, have I known a reflection of this kind cast upon the Presiding Officer of the Senate. Never on this side of the Chamber when there has been a Democratic Presiding Officer has such a thing been suggested as taking out of his hands the appointment of a committee and that it be appointed from the floor of the Senate."<sup>178</sup> Senator Frank Willis, another Republican, proposed 'to strike out these five names, and insert a statement to the effect that it shall be a committee appointed by the Chair.'<sup>179</sup> Wheeler's actions, he charged, were the "most amazing proposition" he had ever heard, and that it was an insult to the President of the Senate to suggest that a fair investigation could only occur if Wheeler appointed the committee.<sup>180</sup> Despite these objections, Wheeler's resolution to investigate the Attorney General passed, and he was allowed to name the committee. Wheeler chose Senator Smith Brookhart, a Republican

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<sup>176</sup> Ibid., 2769.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid., 2770.

<sup>179</sup> Ibid., 2772.

<sup>180</sup> Ibid., 2771.

from Iowa to chair the committee. Wheeler and other Democrats nonetheless understood that such an investigation would be difficult, especially in light of the House's previous attempts.

While lobbying for his resolution, Senator Wheeler was asked why he did not resolve to impeach Daugherty if he had so much evidence against him. Wheeler responded that "impeachment proceedings were attempted in the House of Representatives something like 18 months ago, when...instead of trying the case against the Attorney General, the records of the House show that they tried the Representative in Congress who had the temerity to stand up and file those charges."<sup>181</sup> Wheeler realized that challenging Daugherty's control of the Department of Justice would have potentially adverse consequences for himself. Anyone bold enough to challenge the department could become the target of its investigations. Another Democratic Senator, Joseph Robinson of Arkansas, noted that "as long as he is the Attorney General, and has at his command the shrewdest of all investigators, the head of the Bureau of Investigation, and the thousands of secret service agents who are in the employ of the Department of Justice, while the Attorney General is being investigated, the investigators may also be investigated."<sup>182</sup> And, as they feared, the Bureau of Investigation did investigate the proponents of such a committee, and further attempted to paint Wheeler as a "red," with Bureau officials assigning agents to "detect anything and everything they could find about him."<sup>183</sup>

The Brookhart committee hearings began with the bombshell disclosure that members of the Bureau of Investigation had investigated several senators. In testimony

<sup>181</sup> Ibid.

<sup>182</sup> Ibid., 2982.

<sup>183</sup> Lowenthal, 291.

before the committee, Gaston B. Means (a Bureau employee) admitted to having investigated Senators Thaddeus Caraway and Robert La Follette. In his questioning of Means, Wheeler remarked, “Senator Moses suggests to me that I can save time by asking you what Senators you have not investigated.”<sup>184</sup> Means described the goal of his investigations of La Follette as seeking to find “anything he had where [La Follette] could be stopped” in his efforts to investigate Teapot Dome.<sup>185</sup> The information he found would be used, Means continued, by “quietly get[ting] word to him through his friends, or otherwise, that he had better put the soft pedal on the situation...[to deter La Follette from his] work in the Senate or anywhere else.”<sup>186</sup> Means described the methods in developing such information as seeking to “find out all the mail that comes in, all the papers, anything that he has got lying around. Find out in his home. Just like you would take—the same principle that you pursue, Senator, when you make a criminal investigation.... Report what you find...and then if it is damaging, why of course it is used.”<sup>187</sup> Wheeler asked in his last question, “Did not the Department of Justice during the impeachment proceedings [in the House] of Mr. Daugherty, to your own knowledge, have men following the witnesses and following the investigation to report on various witnesses and other people during that investigation?” Means responded that he had.<sup>188</sup>

Desperate to uncover anything they could to discredit Wheeler, Bureau agents had “looked for evidence of ‘any irregularity or improper conduct’ during Wheeler’s tenure

<sup>184</sup> US Congress, Senate, *Investigation of the Attorney General. Hearings* 68th. Cong., 1st. Sess.: (Washington, D.C.: United States Government Printing Office, 1924), 88. Hereafter, *Investigation of the Attorney General*.

<sup>185</sup> Ibid., 89.

<sup>186</sup> Ibid., 90.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid., 96.

as US attorney in Montana during [World War I.]”<sup>189</sup> They also “investigated his trip to Russia in 1923 and his alleged connection with stolen bonds.”<sup>190</sup> Most salaciously, a special agent sent to Montana by Burns reported that he was “confidentially advised that Senator Wheeler and his former law partner named Baldwin were thrown out of the Elmore Hotel at Great Falls, Montana because of a wild party they gave with two girls in a room at the Hotel. Also that a man by the name [sic] of Stivers who is either an attorney or general counsel for the Andoconda [sic] Copper Company at Montana punched Wheeler in the nose in connection with some deal and Stivers knows a great deal about Wheeler if he is approached by the right person.”<sup>191</sup> In the middle of the Brookhart committee hearings, “Senator Wheeler was indicted by a federal grand jury in Montana for having received \$2,000 from a local oil man, Gordon Campbell, shortly after his election to the Senate in 1923, in return for obtaining oil and gas permits from the Interior Department.”<sup>192</sup> This indictment was a political action, Daugherty having advised Burns before the start of the hearings that it was “quite essential and may be necessary to act promptly in connection with persons who are making attacks upon the government and the department of justice from behind the scenes in order to help those who are being prosecuted and against whom suits will be filed. We will indict anybody we can in this connection if proved to be guilty.... Put two or three good men on this at once and see what can be developed. We will show this thing up.”<sup>193</sup>

Testifying before the Brookhart Committee, Chief Burns admitted to having followed Daugherty’s instructions and had “three men out” in Montana who “had found

<sup>189</sup> Schmidt, 321.

<sup>190</sup> Ibid.

<sup>191</sup> Special Agent Wheeler to Director William Burns, date redacted, FBI# 62-7903-13.

<sup>192</sup> Schmidt, 319.

<sup>193</sup> Harry Daugherty, Memorandum for Mr. Burns, 10 March 1924, 62-7824-70, as quoted in Schmidt, 319.

that [Wheeler] was acting as the attorney for the Gordon Campbell Company.”<sup>194</sup> The Bureau agents continued their observation while in Montana, even after the indictment was filed, but recognized the unlikely possibility that a jury that was anti-Wheeler could be found.<sup>195</sup> In an attempt to influence the jury, one agent reported that the department could rely on the “very effective secret service” of the Anaconda Mining Company “which can be relied upon to influence everyone against Wheeler and this applies to jurors as well as others. This may sound strange to you but that is the way they play local politics and try law suits in the State of Montana.”<sup>196</sup> The reporting agent nonetheless estimated that the possibilities for a victory were bleak in Montana, and regretted “the original indictment was not brought in the District of Columbia, in fact reindictment there even at this late date seems advisable, as agent can anticipate nothing but a hung jury here regardless of the evidence.”<sup>197</sup> Bureau of Investigation officials nonetheless followed the trial closely, with an agent in Montana reporting to Washington which witnesses were heard, the makeup of the jury, and the eventual acquittal.<sup>198</sup>

The political nature of the indictment was further confirmed by another agent’s report from Montana, in which he reported that “a great deal of bitter feeling exists among the various political factions, and foremost among the defenders of Senator Wheeler stands the radical organizations.... [who have] bitterly assailed the Wheeler indictment, and continually refers to this being a frameup by the Director and former Attorney General Daugherty [who resigned March 8, 1924].... The Democratic party

<sup>194</sup> *Investigation of the Attorney General*, 1233-1234.

<sup>195</sup> For continued observation, see William Burns to Fred A. Watt, date redacted, 62-7903-31. For the jury information, see Fred A. Watt to William Burns, 26 April 1924, 62-7903-33.

<sup>196</sup> *Ibid.*

<sup>197</sup> Fred Watt to unknown, but most likely William Burns, 6 May 1924, 62-7903-45.

<sup>198</sup> See Special Agent Daly to Hoover, date redacted, 62-7903-326, Special Agent Daly to Hoover, date redacted, 62-7903-327, Special Agent Daly to Hoover, date redacted, 62-7903-384, Special Agent Daly to Hoover, 24 April 1925, 62-7903-393.

'especially the radically inclined', all support Sen. Wheeler.... On the other hand the Republicans all seem ready and willing to vote subject guilty of any charge placed against him."<sup>199</sup> Bureau agents, moreover, investigated the claims of regular citizens that could damage Wheeler.<sup>200</sup> A committee, chaired by William E. Borah, immediately investigated the charges against Wheeler. This committee exonerated Wheeler, who was also acquitted in Montana in 1925. His Washington indictment was also thrown out.<sup>201</sup> With the completion of the investigations into the Department of Justice, Wheeler and the Senate had the opportunity to address the problem of the Bureau's abusive political surveillance practices. Instead, as in the case of their earlier investigation of Attorney General Palmer, members of Congress were content that these actions were the missteps of a wayward attorney general. Daugherty's resignation and replacement by Harlan Fiske Stone assured members of Congress that a more vigilant executive department would be the most effective method of controlling the Bureau of Investigation.

The decade of 1914 through 1924 marked a time of incredible growth for the Bureau of Investigation. Beginning in the Progressive Era, the power of the executive branch had slowly increased in order to more effectively deal with "modern" problems. The development quickened with the onset of World War I. A major beneficiary of a strengthened executive branch, Bureau of Investigation officials exploited the wartime emergency to expand into new areas. Bureau agents began to investigate the political beliefs of American citizens and aliens alike. Members of Congress, often divided along partisan lines, proved willing to allow Bureau officials to increase the Bureau's powers in order to deal with threats brought by war. With the signing of the Armistice, however,

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<sup>199</sup> E.B. Hazlett to J. Edgar Hoover, 12 May 1924, 62-7903-46.

<sup>200</sup> For example, see redacted to Attorney General Daugherty, 17 March 1924, 62-7903-107.

<sup>201</sup> Schmidt, 319-320.

members of Congress made no attempt to rein in the Bureau. Bureau appropriations instead continued to increase in order to fight the radical threat. The Palmer Raids of 1919 and 1920 and the corruption of Attorney General Harry Daugherty created an opening for members of Congress to evaluate not only the Bureau of Investigation's actions but also whether Congress had the responsibility to oversee more closely or define by statute the Bureau's powers. Instead, these men too often concluded the individual attorneys general were at fault and, by simply replacing that official, abuses of power would be corrected. By abandoning its powers of regular oversight, the Congress of the early 1920s set the tone for the next few decades of executive control of the Bureau of Investigation.

Bureau officials and their superiors in the Department of Justice, in their efforts to sustain the Bureau's newly gained powers, resorted to several methods to control members of Congress. When lobbying for increased appropriations, senior Department of Justice officials continually cited an increasing radical threat to the United States. The imminence of attacks necessitated an increase in funding to keep the nation safe. With bombs exploding throughout the country in 1919, strikes crippling American industry, and riots burning throughout the nation, members of Congress were all too willing to honor such requests. And when the Department of Justice used these appropriations to round up radicals throughout the nation, their actions were, at first, commended by members of Congress. Once reports emerged that suggested that the Department had gone too far, both the House and Senate initiated investigations. These investigations, however, only led to calls to reform deportation statutes and not to impose legislative restrictions on methods or actions of the Bureau of Investigation.

A more serious problem surfaced in 1921, when the Harding administration politicized the Department of Justice. Members of Congress were again slow to react to revelations of Bureau abuse of power. Their narrow interest in maintaining their advantage in the White House and Congress led leading Republicans to stifle any investigation into the administration's critics. Only Senator Wheeler, a freshman Democrat from Montana, eventually managed a thorough investigation of the Department of Justice. His efforts were rewarded by the recourse of politically motivated criminal indictments and Bureau investigations of Wheeler and other congressional critics of the incumbent Republican administration. Yet, the evidence that Wheeler developed during these hearings provoked only the resignation of a corrupt attorney general. The root of the problem remained. Even as (and partly because) Bureau of Investigation officials cut back on the Bureau's political surveillance after 1924, members of Congress remained convinced that the executive branch was the most appropriate overseer of the Bureau. This belief crippled future attempts at meaningful Congressional oversight.

### **Chapter 3**

#### **Congressional Powers Challenged: 1924-1941**

On April 6, 1924, Attorney General Harry Daugherty resigned because of the scandals surrounding his administration of the Department of Justice. In his place, President Calvin Coolidge named Harlan Fiske Stone, the former dean of Columbia's Law School. Just over a month later, Stone acted to restore the public's confidence in the Bureau of Investigation, firing Director William Burns and issuing sweeping new guidelines intended to keep the Bureau from political investigations. On May 9, 1924, Stone continued this professionalization of the Bureau first by naming J. Edgar Hoover Acting Director, then making this appointment permanent in December. For a time, the Bureau followed Stone's policies. It did become more professional, more expert, and more responsible early in Hoover's directorship. By 1932, the Bureau of Investigation had stopped performing, as far as records indicate, the political investigations that had led to the scandals of the Palmer and Daugherty years.

Impressed by Stone's reforms, members of Congress again became more trusting of the Bureau, believing that the scandals in part were the consequences of deficient attorney general oversight. Upon assuming the directorship, Hoover initiated a series of changes, removing unfit agents, closing several field agencies, and making sure Attorney General Stone's stricter hiring standards were enforced. No longer would political hacks and cronies serve as Bureau agents. Instead, Hoover and Stone recommended that only accountants or those with law degrees should be considered for Bureau appointment. Such changes convinced Congress that the new director could be trusted. Bureau appropriations requests remained basically unchanged from 1924 to 1929, suggesting that

the newly restrained Bureau was acting within proper limits. Congress could therefore regain confidence in the propriety of the Bureau's actions, its inaction making it more difficult to challenge these practices in the future.<sup>1</sup>

During the years 1924 to 1941, members of Congress had numerous opportunities to institute meaningful reform of the FBI. The era began in scandal, with the prospect that Congress could legislate the Bureau out of existence or, at a minimum, impose strict legislative restraints. The publicized abuses perpetrated by Bureau officials during the Palmer Raids and the Harding administration had increased Congressional investigations into the Bureau. By 1941, however, the Bureau had evolved into a more powerful agency that, ironically, could safely repeat the same abuses that triggered Congressional outrage in 1924. During these fifteen years, critics of the Bureau were either ignored or rebuffed and Congress failed to respond with meaningful reform. While the 1930s were marked by an expanded federal government, including in its law-enforcement powers, there remained an underlying, powerful concern about Big Brother and a still-powerful states' rights tradition.

With the Great Depression and the resulting expansion of the federal government's reach into daily life under Franklin D. Roosevelt's New Deal, the Bureau soon experienced an incredible expansion. Concurrent with the increasing federal powers highlighted by Roosevelt's New Deal programs, Attorney General Homer Cummings pushed through Congress the so-called "12-Point Crime Control Program," marking an incredible expansion in the federal government's law enforcement responsibilities. By inspiring fear that their failure to endorse the expanded federal law enforcement role would make them vulnerable to charges of being "soft on crime," members of Congress

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<sup>1</sup> Donner, 8.

endorsed Cummings's argument that only expanded federal powers could combat crimes like bank robbery, kidnapping, and extortion. Cummings painted a picture of a nation on the brink of catastrophe, with state and local police overwhelmed by fast-moving gangsters flush with cash from illegal alcohol sales. As Congress enacted this program into law, the Bureau of Investigation's appropriations and investigative responsibilities almost doubled between 1932 and 1939. Attorneys general and Director Hoover continually portrayed the Bureau to congressional appropriations committees as effectively stopping crime, but only barely. Without an increase in funding, the nation would be overwhelmed.

Members of Congress supported the increased Bureau for the most part. The exceptions, Senators Kenneth McKellar and George Norris, could never convince their colleagues to investigate Hoover's Bureau fully. During a 1936 Senate hearing, McKellar questioned Hoover's qualifications and management. Hoover responded by taking a more public role in arrests, proving his crime-fighting bona fides to the nation. Norris, in 1940, offered much harsher criticism, condemning the Bureau of Investigation for violating the civil rights of those arrested for their earlier actions as members of the Abraham Lincoln Brigade. Both senators brought their concerns to the Senate floor, but were repudiated by the powerful defenders of the Bureau. Hoover himself responded publicly, mainly through loyal members of the press, that the charges were part of a "smear campaign" designed to discredit the director and stop investigations into the activities of Americans.

With the outbreak of war in Europe in September 1939, Roosevelt began to formulate a foreign policy designed to aid the Allies. The American public, and many prominent members of Congress, questioned these actions, preferring an isolationist

approach that would protect the nation from foreign entanglements. On the home front, President Roosevelt began pushing for a reorganization of government aimed at increasing efficiency and protecting the nation from “fifth-column” threats. Senator Burton Wheeler, a long-time nemesis of Hoover and the Bureau, questioned Roosevelt’s proposed transfer of the Bureau of Immigration into the Department of Justice, claiming that the investigators in that department were a “lot of cheap two-by-four detectives.”<sup>2</sup> Wheeler, along with Senators Norris and Gerald Nye and Congressman Hamilton Fish, challenged Roosevelt’s increasingly activist foreign policy and, in return, were investigated by the Bureau, who then gladly forwarded the findings to White House officials.<sup>3</sup> While these senators attempted to portray the Bureau as out-of-control, the ruthlessly efficient image of the “G-man” cultivated by Hoover remained dominant. Even as these senators argued for closer congressional scrutiny, the prevailing belief was that only the fast-moving executive branch could properly deal with the problems of the age. Even more critically, the White House was led by a man who valued the political intelligence the Bureau could provide about his chief rivals. As the prospect of American involvement in World War II increased, Hoover gladly provided Roosevelt with that intelligence, making his Bureau’s resources indispensable to the president’s vision of national security and political expediency.

The importance of the increased power of the executive branch was illustrated most tellingly in the growth of the Bureau’s wiretapping policy in the early 1940s. Congress had received testimony regarding the Bureau’s wiretapping policy as early as February 1931. The issue reemerged as an important policy matter after Congress enacted

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<sup>2</sup> Douglas M. Charles, *J. Edgar Hoover and the Anti-Interventionists* (Columbus: The Ohio State University Press, 2007), 53.

<sup>3</sup> Charles, 52-58.

legislation banning wiretapping in 1934. During the floor debate about this legislation, no member of Congress raised the matter of Bureau wiretapping. Instead, the ban was instituted to prevent private agencies (especially the telephone companies themselves) from initiating such wiretaps. Initially, then, the Roosevelt administration construed that the law did not apply to federal agents who were defending the nation or apprehending criminals. The Supreme Court, in *Nardone v. United States* in 1937 and 1939 and related rulings, concluded that federal agents were not exempt from that law and that any information obtained from illegal wiretaps tainted the entire case, forcing a dismissal.<sup>4</sup> With war in Europe, members of the Department of Justice began urging Congress to legalize wiretapping, at least in cases involving national security. Three separate Congressional committees conducted hearings about the necessity of wiretapping in these types of cases from 1940 to 1942. The administration argued such wiretaps were needed to protect the nation from espionage and sabotage because “the criminal and the spy may use the highways of communications without restraint or even surveillance.”<sup>5</sup> Pointedly, after World War II began in Europe, the administration urged members of Congress to reconsider the wiretapping ban.

However, the law remained unchanged. Instead, President Roosevelt secretly authorized wiretapping on May 21, 1940, believing the *Nardone* ruling was never intended to apply to national defense matters.<sup>6</sup> Because Congress had not given the president the powers he felt necessary to defend the country, the president acted

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<sup>4</sup> Athan Theoharis, “FBI Wiretapping: A Case Study in Bureaucratic Autonomy,” *Political Science Quarterly* 107 no. 1 (Spring 1992): 104. The latter two rulings came in 1937 and 1939.

<sup>5</sup> United States Congress, House, *To Authorize Wire Tapping: Hearings on H.R. 2266 and H.R. 3099 Before Subcommittee Number 1 of the House Committee on the Judiciary* 77th Cong., 1st Sess., (Washington, D.C.: United States Government Printing Office), 17

<sup>6</sup> Theoharis, “FBI Wiretapping: A Case Study in Bureaucratic Autonomy,” 99.

unilaterally. Congress at the time and in succeeding years was never directly informed that the 1934 legislative ban was, in effect, ignored. While Bureau officials continued to cultivate friendly members of Congress, more and more of the Bureau's resources were spent aiding President Roosevelt. He commanded such devotion, and could exploit the willingness of Bureau officials to investigate his enemies, that Congress often followed his policies with little hesitation.

The era from 1924 to 1941 was marked by a dramatic increase in the power of the Federal Bureau of Investigation, in great part because this expansion became intertwined with an incredibly powerful executive branch. While Congress maintained its appropriations powers, the hearings on Bureau appropriations requests increasingly became perfunctory. Bureau officials purposefully began to cultivate close relationships with the members of the appropriations committees, often answering questions and providing tours of their facilities to showcase their professionalism and scientific wizardry. Those members of Congress who questioned this growth were investigated by the Bureau and shouted down during debates. Even in an area, like wiretapping, where Congress had made its wishes known, the executive branch could issue secret directives overriding the people's representatives. As war escalated in Europe, the same problems that had plagued the United States during World War I reemerged. To ensure the nation's safety, the president once again unleashed the Federal Bureau of Investigation, aiming it toward political opponents and potential saboteurs alike. Roosevelt effected this change in the Bureau's role without the oversight necessary to ensure that constitutional requirements were met. Congress was increasingly pushed aside or voluntarily took a back seat. Instead of pursuing investigations into abuses, as they had in the wake of the

Palmer Raids and the scandals of the Harding administration, members of Congress failed to respond to Bureau abuses during the Roosevelt administration.

Attorney General Harlan Fiske Stone's reforms convinced members of Congress that the illegalities of the past were the products of corrupt administration. With the proper oversight exercised by the attorney general, the Bureau of Investigation would no longer act improperly. As Stone wrote to a colleague, he could "conceive of nothing more despicable nor demoralizing than to have public funds of this country used for the purpose of shadowing people who are engaged in legitimate practices."<sup>7</sup> With these limits in place, members of Congress began to breathe easier and made no attempt to codify Stone's extensive restrictions into law. In his first report to Congress as attorney general, Stone listed the various changes he had made. These included confining Bureau investigations to violations of federal law and pledging further that his administrative changes would yield substantial financial savings. Unqualified and unnecessary employees were removed, seven field offices were closed, and regular inspections were conducted of the field offices that remained.<sup>8</sup> In his appointee of acting director, Stone had found a willing collaborator for reform, a bureaucrat willing to take Stone's ideas and implement them.<sup>9</sup>

Stone's imprint left a lasting impression upon Hoover, as he remarked to Stone's widow that "it was he back in 1924, who, in the reorganization of the Department of Justice gave the Federal Bureau of Investigation the support, counsel, guidance, and direction in those formative years in building the foundation upon which its present

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<sup>7</sup> Harlan Stone to Felix Frankfurter, 9 February 1925, FBI File# 62-8782-NR.

<sup>8</sup> United States Department of Justice, *Annual Report of the Attorney General of the United States for the Year 1924* (Washington, D.C.: United States Government Printing Office, 1924), 60-61.

<sup>9</sup> Gentry, 132.

structure was erected.”<sup>10</sup> Without the professionalization of the Bureau, Hoover could not have succeeded in convincing Congress that his bureau did not need stricter congressional oversight.

Hoover employed several methods to convince members of Congress in the years after 1924 that the Bureau had indeed been reformed. One such method was the increasingly efficient and scientific ways in which the Bureau of Investigation combated crime. The most celebrated involved the creation, in 1924, of a nationwide Fingerprint Division. Then, in the early 1930s, Hoover established a Crime Laboratory to employ the latest technology and methodology to identify criminals. The Bureau also began to publish an annual summary of crime statistics, *Uniform Crime Reports*, which put numbers to trends in criminal behavior.<sup>11</sup> The activities of these divisions were widely publicized, showing Congress and the public that the Bureau was on the forefront of law enforcement and had abandoned its controversial political investigations. Members of Congress took notice, lauding Hoover’s actions and telling their colleagues that the Bureau, in 1936, had identified 4,403 fugitives from fingerprints alone.<sup>12</sup> In his annual reports to Congress, Hoover stressed the activities of these departments and the aid they provided to local law enforcement. As a result, over the course of the 1930s, Hoover came to be seen as an expert on criminal detection. He took strides to convey that expertise to the nation. As he reported to Congress in 1935, the Bureau had established “the FBI National Police Academy...to afford training to representatives of local, county, and State law-enforcement organizations; thus enabling them to become instructors in the

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<sup>10</sup> Hoover to Mrs. Harlan Fiske Stone, 23 April 1946, FBI File# 62-8782-29.

<sup>11</sup> *The FBI: A Comprehensive Reference Guide: From J. Edgar Hoover to The X Files*, ed. by Athan Theoharis, et. al. (New York: Oryx Press, 2000), 12.

<sup>12</sup> *Congressional Record* v. 80 (74th Cong., 2nd. Sess: 3 January 1936-20 June 1936), 4812.

field of scientific crime detection in their own department.”<sup>13</sup> Hoover certainly brought change to law enforcement in the United States. The FBI indeed became much more scientific and much more technical—developments confirmed by the ocean of statistics regularly released to members of the Bureau to show, with numerical proof, that Bureau appropriations were being used efficiently.<sup>14</sup>

As the Bureau became more aware of the importance of congressional appropriations committees, its leadership began to court these influential congressmen. In order to improve the Bureau’s relationship with appropriations subcommittees, Hoover began to forward relevant information to members of the House subcommittee which dealt with the Bureau’s budget.<sup>15</sup> He also took advantage of any opportunity for positive publicity, such as photographing the members of the House Appropriations Committee being fingerprinted during their 1936 visit. The Bureau’s assistant director, Clyde Tolson, told Hoover the members “all expressed a desire to have a photographer present to take pictures of this activity.”<sup>16</sup> In the wake of this photo opportunity, one member of the subcommittee wrote Hoover, telling him that he was “convinced that you are doing a work that is of vital importance to the American people. I think you have the ’racketeers on the run.”<sup>17</sup> As the 1930s continued, Hoover and the FBI would constantly update their records on members of Congress to include the new members of the House who would handle their budget requests. In this manner, the Bureau could court allies in Congress and ensure their budgets received positive attention. These actions certainly worked in

<sup>13</sup> United States Department of Justice, *Report of the Attorney General for the Year 1936* (Washington, D.C.: United States Government Printing Office, 1936), 122.

<sup>14</sup> Cook, 213-214. Similarly, Curt Gentry argued these statistics were critical during the Bureau’s budget hearings. See Gentry, 130.

<sup>15</sup> Memo for Mr. Edwards, Mr. Hardo, and Mr. Joseph from Hoover, 12 February 1936, FBI File# 62-40772-3.

<sup>16</sup> Memo for the Director from Tolson, 12 February 1936, FBI File# 62-40772-2, Author’s FOIA Request.

<sup>17</sup> Congressman Glover H. Cary to Hoover, 10 January 1936 [this date is incorrect], FBI File# 62-40772-22.

the Bureau's favor, as more than one appropriations hearing concluded with a congressman remarking that "the committee in the past has always been impressed with the informing and thorough statement which Mr. Hoover presents. He is always so thoroughly familiar with the work of his Bureau that he is prepared to answer any question relating thereto with definite information."<sup>18</sup> The positive evaluations the committee gave Hoover allowed him to eventually increase his budget requests when the nation was seemingly faced with new threats and, consequently, the Bureau's responsibilities grew.

As the Great Depression took hold of the country, a new administration was elected into office, changing the way the Bureau was utilized. Because of Stone's changes, the professionalized agency run by Hoover was in a better position to take advantage of the opportunities offered by Roosevelt's presidency. As a leader, Roosevelt was intrigued by the intelligence opportunities offered by the Bureau, which led to even greater collaboration between the executive and Hoover's agency. Even though Hoover had been appointed by a Republican and faced possible dismissal by this Democratic administration, Hoover did all he could to ingratiate himself to the new president and attorney general.<sup>19</sup> Hoover almost certainly dodged his dismissal only with the sudden death of Roosevelt's first attorney general designate, the Bureau's former adversary, Senator Thomas Walsh. Instead, Homer Cummings became Roosevelt's first attorney general, and Hoover was quick to offer his services, noting he had "instructed [an agent] to contact Attorney General designate Homer Cummings and offer the services of this

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<sup>18</sup> US Congress, House, Subcommittee of House Committee on Appropriations, *Department of Justice Appropriation Bill for 1935. Hearings*, 73rd Cong., 2nd. Sess., (Washington, D.C.: United States Government Printing Office, 1934), 80.

<sup>19</sup> Cook, 150; Gentry, 153-155.

Bureau, telling Mr. Cummings this is the customary courtesy.”<sup>20</sup> Hoover also sent bodyguards to Cummings before the inauguration, hoping to end speculation that the Bureau had played any role in the death of Senator Walsh.<sup>21</sup>

Hoover also used his connections in Congress to persuade Roosevelt to keep him, as many wrote the incoming president, lauding Hoover’s credentials as director. Congressman J.J. Swain, a Democrat from South Carolina, wrote the new president that “whatever may be his prior history, I do know of my own knowledge of his splendid service as head of the Bureau of Investigation. I know that he has the knowledge of the entire situation in every nook and corner of the country, he has knowledge of the machinery of the federal government and of the cooperating state governments, and he has the push and pep and way of getting action that has made his Bureau a model, not only for the Department of Justice, but for every other Department.... I hope you will not give the lawless element in American cities the joy of learning of Mr. Hoover’s removal from this strategic place.”<sup>22</sup> According to Cummings’s records, 11 congressmen, 6 senators, and several private individuals and groups endorsed Hoover, leading Cummings to keep Hoover as director.<sup>23</sup> Attorney General Cummings apparently never considered removing Hoover from his office, and Hoover never stopped in his attempts to prove himself to the Roosevelt administration. Throughout his tenure, Cummings received all types of assistance from Hoover, from private tours of the Bureau for Cummings’s

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<sup>20</sup> Memo from Hoover to Mr. Nathan, 3 March 1933, FBI File# 62-28354-1.

<sup>21</sup> 3 March 1933 Diary Entry, Homer S. Cummings Diaries, 1919-1936, Microfilm Collection, Roll 1, Franklin D. Roosevelt Library, Hyde Park, New York. Hereafter, FDR Library.

<sup>22</sup> Congressman J.J. McSwain to Roosevelt, 25 July 1933, Folder: Justice Department, FBI, 1933-1934, Official File 10B: Justice Department, FBI, FDR Library.

<sup>23</sup> Memo for Mr. Stanley, 1 August 1933, Folder: J. Edgar Hoover, Aug. 1933-March 1947, Homer S. Cummings Papers, University of Virginia Special Collections Library. Hereafter, Cummings Papers.

houseguests to research on air-conditioning units.<sup>24</sup> By 1934, Cummings began to focus on a new phenomenon plaguing the American countryside.

Beginning in 1933 and over, for the most part, by the end of 1935, a great crime wave struck Americans' fears, fascinating people with tales of bank robberies, gun fights, fast cars, and the Robin Hood fantasy of stealing from the rich to help the poor during the worst economic turmoil in American history. This short-lived event, more than anything else, "catapulted the Bureau into national prominence."<sup>25</sup> With names like "Creepy" Karpis, "Machine Gun" Kelley, "Pretty Boy" Floyd, and "Public Enemy Number One" John Dillinger, thieves, kidnappers, and murderers began to dominate headlines throughout the nation. To combat these criminals, Attorney General Cummings would have to overcome two related problems. First, he would have to deal with the public's long-standing mistrust of federal power, especially over law enforcement. Since the nation's founding, a powerful, centralized police force was something that was feared. Cummings mollified these concerns by emphasizing that only the federal government had the power necessary to combat these "modern" criminals. Second, Cummings realized that the jurisdiction of federal law enforcement was quite limited. There were very few statutes that allowed the federal government to investigate, arrest, try, and convict these criminals. To this point, most federal laws dealt with issues such as counterfeiting, anti-trust legislation, and public lands. Even laws like the Mann Act and the Dyer Act did not apply to the current situation. Cummings had to convince Congress to increase federal police jurisdiction in order to take on these criminal activities. By overcoming these two problems—the lack of federal jurisdiction and the strong states' rights beliefs held by

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<sup>24</sup> For example, see Memo from Hoover to Cummings, 6 June 1936, FBI# 62-28354-251; Memo from J. J. McGuire to Mr. Nichols, 30 November 1938, FBI# 62-28354-397.

<sup>25</sup> Gentry, 167.

much of the public—Cummings greatly increased the powers of the federal government, just as President Roosevelt had done with much of his New Deal legislation. The “12-Point Crime Program” crafted by Cummings must be seen in the same light as the New Deal. It vastly increased the responsibilities of the federal government and gave Hoover and the Bureau of Investigation much more power.

As early as December 1933, Attorney General Cummings discussed the crime problem with members of Congress. Testifying before a House subcommittee on appropriations, he told the members that “we have had...a recrudescence of crime, especially of certain types of crime. We have come into the era of the kidnaper and the racketeer and those who make a business of crime, those who prey upon society, the predatory criminal.”<sup>26</sup> He also began to chip away at the states’ rights argument, telling the subcommittee that “the State and local authorities have been more or less unable to cope with crime because crime has become interstate in character and the twilight zone that exists between State and Federal authority has been recognized by the more adroit criminals as a zone of relative safety. Therefore I have been obliged, desiring to avoid anything radical, revolutionary, or economically unsound, to stress the necessity for cooperation between the Federal and State authorities so that that twilight zone, if it is at all possible, can be made bright with a new light.”<sup>27</sup> At this stage, Cummings cautiously encouraged cooperation between federal and state authorities. Soon, however, Cummings would suggest a dozen new laws to Congress, strengthening federal control over certain crimes. In order to persuade Congress and the country on the importance of these

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<sup>26</sup> US Congress, House, Subcommittee of House Committee on Appropriations, *Department of Justice Appropriation Bill for 1935. Hearings*, 73rd Cong., 2nd. Sess., (Washington, D.C.: United States Government Printing Office, 1934), 3.

<sup>27</sup> Ibid., 4.

suggested laws, Cummings gave speeches across the country, explaining his reasoning and emphasizing the importance of local law enforcement.

In a November 1933 speech, Cummings continued to note the importance of cooperation between federal and state law enforcement agencies. He noted that the “framers of the Constitution regarded law enforcement as inherently a local power.... The interstate character of many forms of crime, however, is a factor of constantly increasing importance. The modern criminal has learned that there is a certain security in the Twilight Zone between State and Federal jurisdictions. Pressure of necessity is constantly widening the field of Federal activities. The operations of the Department of Justice, however, are limited not only by law, but by its budget.”<sup>28</sup> In order to more effectively combat crime, then, the Department of Justice would need new laws and more money.

In February 1934, the Department of Justice began to send suggested legislation to the chairmen of the House and Senate Judiciary Committees in order to increase Department of Justice authority in crime prevention. In a press release, the Department noted it had been working closely with “Senators Copeland, Vandenberg, and Murphy” in “an attempt to secure constructive and helpful legislation drawn along reasonable conservative lines and within constitutional limits. Roving criminals, bent upon the commission of various types of predatory crime, constitute a growing menace to law and orderly government.... The necessity for additional legislation to meet these serious

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<sup>28</sup> Address by Homer S. Cummings, “The Campaign Against Crime,” delivered over the network of the Columbia Broadcasting Company, Printed Materials Collection: Justice, Department of; Folder 2: Department of Justice—Attorney General’s Office—Addresses by Homer S. Cummings, Press Releases, April 15–November 2, 1933, FDR Library.

situations is as imperative as it is obvious.”<sup>29</sup> The laws, which included making bank robbery a federal crime, extending the interstate portions of the kidnapping and stolen property statutes to more easily involve federal investigators, and regulating firearms, were designed to illuminate that twilight zone between state and federal jurisdiction. As the Justice Department’s press release emphasized, “Crimes are frequently perpetrated by men who operate in organized groups and do not confine their unlawful activities to any particular city, county, or State, but, on the contrary, move rapidly across State lines from the scene of one crime of violence to another. Although local authorities are generally honest, alert, and efficient, the limitations upon their facilities and jurisdiction prevent them from dealing adequately with this type of criminal.” Department officials were quick to point out, however, that these laws were not meant to pit state law enforcement agencies against the federal government. Criminal detection and suppression would remain a “State or local obligation.” These laws, instead, would enhance the cooperation between agencies and thus more effectively combat modern criminals.<sup>30</sup>

By April 1934, it had become clear that Congress would pass at least parts of the proposed 12-Point Crime Program. In response, Attorney General Cummings asked Hoover what effect the legislation would have on his division. Hoover told the attorney general that he estimated “200 Special Agents and 70 accountants in addition to our present force of 320 Special Agents and 80 accountants would be required to handle these additional duties.” An additional appropriation of \$1,978,515 would be needed to fund

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<sup>29</sup> Department of Justice Press Release, 19 February 1934, Folder: Department of Justice Circulars, Press Releases and Papers re: Crime Suppression and FBI, ca June 1933-Dec. 1935, Cummings Papers.

<sup>30</sup> Ibid.

these new agents, almost doubling the Bureau's 1934 appropriation.<sup>31</sup> To continue to garner public support for the plan, Cummings gave numerous speeches throughout the country, telling his audiences that the United States was "no longer a nation whose problems are local and isolated.... The Federal Government has no desire to extend its jurisdiction beyond cases in which, due to the nature of the crime itself, it is impossible for the States adequately to protect themselves. In response to this manifest necessity, and entirely within Constitutional limitations, the Department of Justice is urging Congress to pass certain important bills now pending before that body."<sup>32</sup> Throughout the congressional debate about the 12-Point Crime Program, Cummings carefully extolled the cooperative nature of the proposed laws. Local law enforcement would not be replaced by a Scotland-Yard model. The federal role would instead supplement local control in areas in which jurisdiction was questionable. With this cautious line, Cummings succeeded in obtaining the approval of the 76th Congress for the majority of his program.

Both the president and the attorney general closely monitored the Congressional debate about Cummings's program. Following his testimony before the House Judiciary Committee, Cummings noted, "There seemed to be some opposition to these bills, based primarily on the objections of those who fear the invasion of States' Rights."<sup>33</sup> In April 1934, Assistant Attorney General Joseph Kennan told Louis McHenry Howe, Roosevelt's secretary, that "we need perhaps for absolute assurance thirteen members" of the House

<sup>31</sup> Memo for the Attorney General from Hoover, 30 April 1934, Folder: Memoranda of HSC, Attorney General with the Federal Bureau of Investigation, Jan. 1933-Dec. 1935, Cummings Papers.. The 1934 appropriation was \$2,880,000. Hoover estimated the increased responsibilities would require a total appropriation of \$4,858,515 for fiscal 1935.

<sup>32</sup> Speech by Homer S. Cummings before the Continental Congress of the Daughters of the American Revolution, 19 April 1934, Folder: Speech by HSC: "A Twelve Point Program," Cummings Papers.

<sup>33</sup> 20 March 1934 Diary Entry, Homer S. Cummings Diaries, 1919-1936, Microfilm Collection Roll 1, FDR Library.

Judiciary Committee to ensure passage of the bill. Kennan identified the members who were committed to passage and those who could be persuaded by a conversation with the president.<sup>34</sup> The President thereupon discussed the bills with members of the House, decrying any delay caused by House Judiciary Committee Chair Hatton Sumners, who remained uncomfortable about granting too much power to the federal government. One representative told the President, “It would be wise if you talked to him again.”<sup>35</sup> Even Attorney General Cummings noted, in his diary, that he had asked Roosevelt “to endeavor to contact Congressman Sumners and try to get him to take a more friendly attitude toward our pending Crime Bill.”<sup>36</sup>

The President’s behind-the-scenes support for the Department of Justice helped ensure congressional approval of the 12-Point Crime Program, which Roosevelt signed into law on May 18, 1934. Upon signing the bills, the President noted that “Congress has provided additional equipment for the Department of Justice to aid local authorities.” Cummings followed by saying, “The Congress has cooperated splendidly by enacting the greater part of the ‘twelve-point program’ of the Department of Justice.... The enactment of these laws, closing many loopholes through which criminals have evaded Federal capture and punishment, comes at a crucial moment.... The Department of Justice, cooperating with local authorities, has already brought to bear its present facilities in such fashion that scores of desperadoes have been rounded up, shot down or convicted.... With added facilities and the elimination of certain legal handicaps, the Department will

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<sup>34</sup> Joseph B. Kennan to Louis McHenry Howe, 10 April 1934, Official File 10, Folder 2: January-April 1934, FDR Library.

<sup>35</sup> 15 April 1934, Official File 419: Congress of the U.S., Folder: Congress of the U.S., April-December 1934, FDR Library.

<sup>36</sup> 23 March 1934 Diary Entry, Homer S. Cummings Diaries, 1919-1936, Microfilm Collection Roll 1, FDR Library.

be able to prosecute even more vigorously its drive upon organized crime.”<sup>37</sup> With the laws signed, Cummings had overcome national fears of federal policing. With the aid of the president and the work of several members of Congress, a crucial part of the New Deal anti-crime agenda had been passed. As in the case of other New Deal initiatives, federal powers greatly increased. Problems once seen as local were now being dealt with on a national level.

Following passage of the 12-Point Crime Program, the Attorney General and the President began thanking the members of Congress who had aided their efforts. These included Senators Hugo L. Black, Pat McCarran, and William Borah, along with Congressmen Hatton Sumners and Emanuel Celler. Cummings specifically urged the president to thank Henry Ashurst, the Chair of the Senate Judiciary Committee, who therefore received a Presidential letter of appreciation.<sup>38</sup> After passage of the program, Cummings again spoke of congressional aid, noting that the Department “could neither ignore nor fail to share in the concern felt by Members of Congress concerning both economy plans and any extension of the Federal police power that might encroach on the rights of the states. We felt that cooperation and understanding all around were as much needed to make our program effective as the specific reform we sought. It was indeed in that spirit of understanding that the Congress, despite all their other great cares, saw to it that our program was granted almost 100 per cent.”<sup>39</sup>

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<sup>37</sup> Immediate Release for the Press (308), 18 May 1934, President’s Secretary File, 1933-45; Folder: President’s Secretary File, Departmental File, Justice: 1933-37, FDR Library.

<sup>38</sup> Memo for the Attorney General from Assistant Attorney General Joseph B. Keenan, 3 July 1934, Folder: Crime Bills, Cummings Papers; Attorney General Cummings to Franklin Roosevelt, 28 June 1934, Official File 117, Folder 2: Crime, 1933, FDR Library.

<sup>39</sup> “Law and the New Deal,” Address by Homer S. Cummings before the National Press Club, 6 July 1934, Printing Materials Collection: Justice, Department of; Folder: Department of Justice—Attorney General’s Office—Addresses by Homer S. Cummings, Press Releases, January 11-December 13, 1934, FDR Library.

At the same time, the president received the report he had commissioned in August 1933. Professor Raymond Moley had spent nine months examining the federal enforcement of criminal law. Once the crime bills were passed, Moley's report was published. This report conclusively stated that the majority of criminal offenses would remain within the jurisdiction of the states and an increasingly powerful federal government would be checked by citizens increasing their participation in public affairs. More important for the Bureau, however, Moley reported that a "substantial increase" in special agents, equipment, and funding would be necessary to allow the Bureau to fulfill its new obligations. Without adequate facilities or personnel, the effect of the passage of the laws would be meaningless.<sup>40</sup> As Hoover had already outlined to the attorney general, these new laws would require larger appropriations and more personnel. Both Cummings and Hoover reiterated these needs in their testimony before the House and Senate Appropriations Committees, eventually garnering substantial increases for both the Department of Justice and its Bureau of Investigation.

In the years following passage of the 12-Point Crime Program, Hoover made sure to inform Congress about the new responsibilities his department faced and the costs associated with them. For example, in July 1934, he told Congress that "the enforcement of these new Federal laws will devolve considerable additional work" upon the Bureau.<sup>41</sup> A year later, he reported that 1935 "was marked by a notable increase in investigative jurisdiction."<sup>42</sup> By 1936, however, certain influential Senators began to question the

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<sup>40</sup> 19 May 1934. The report was published in newspapers on 23 May 1934. Official File 10: Department of Justice; Folder: May-June 1934, FDR Library.

<sup>41</sup> United States Department of Justice, *Report of the Attorney General for the Year 1934* (Washington, D.C.: United States Government Printing Office, 1934), 124.

<sup>42</sup> United States Department of Justice, *Report of the Attorney General for the Year 1936* (Washington, D.C.: United States Government Printing Office, 1936), 122.

Bureau's appropriations increases. Senator Kenneth McKellar, the powerful chair of the subcommittee of the Senate Committee on Appropriations which had oversight responsibilities over the Department of Justice, accused the Bureau of "running wild," provoking a great debate on the floor of Congress.<sup>43</sup>

The debate over the fiscal-year 1937 budget marked a turning point in the relationship between Congress and the Federal Bureau of Investigation. In the House, Hoover had been in close contact with Thomas McMillan of South Carolina, the chair of the appropriations subcommittee that dealt with the Department of Justice's budget. In March 1936, the Bureau's assistant director, Clyde Tolson, reported confidentially to Hoover that the committee's recommendation would "exceed the Budget Bureau estimate by \$300,000."<sup>44</sup> In fact, McMillan told Tolson that "the Committee would have liked to have granted us more money but that he felt they were doing very well by us in view of the fact that they were under instructions to limit total expenditures for the next fiscal year."<sup>45</sup> McMillan justified this increase to his House colleagues by recounting the savings brought to the Treasury by the Bureau, which amounted to \$38,500,000 in fines, recoveries, and savings.<sup>46</sup> In striking contrast, by April, the Senate Appropriations Committee had begun debating the Bureau's budget. The reception here for Hoover and FBI appropriations was much less favorable.

Chaired by Senator Kenneth McKellar, a Democrat from Tennessee, the subcommittee of the Senate Appropriations Committee began its hearings by questioning

<sup>43</sup> United States Congress, Senate, Subcommittee of the Committee on Appropriations, *Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1937. Hearings*, 74th. Cong., 2nd. Sess. (Washington, D.C.: United States Government Printing Office, 1936), 170.

<sup>44</sup> Clyde Tolson to J. Edgar Hoover, 13 March 1936, Hoover Official and Confidential File, Marquette University Archives. Hereafter, Hoover OC Files.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Congressional Record* v. 80, 74th. Cong., 2nd. Sess. (3 January 1936-20 June 1936), 4813.

Hoover on April 6, 1936. In the beginning, the questions posed by members of the committee were favorable to Hoover, asking him about the demands that his Bureau faced. The tone changed once Senator McKellar began questioning Hoover. Noting that Hoover was requesting an increase of \$1,025,000, McKellar asked what would be done with the money. Following Hoover's answer, McKellar asked if there was "any money directly or indirectly spent for advertising," referring to the incredible increase in so-called "G-man" motion pictures produced in Hollywood in the preceding years.<sup>47</sup> Hoover strongly denied that any government funds had been spent in the making of these pictures, while McKellar responded that he felt "they have hurt the Department very much, by advertising your methods."<sup>48</sup> He then asked Hoover if the Bureau employed any writers in light of the large amounts of publicity it received. Coming to Hoover's aid, Senator Joseph O'Mahoney asked if the increased publicity might have been the result of "public antagonism toward gangster movies, and the producers desired to give the law enforcement end and therefore resorted to publicizing the G-men."<sup>49</sup> Hoover concurred, and McKellar abandoned this topic. Nonetheless, McKellar laid the groundwork for a more skeptical hearing, in light of the criticism of Hoover as a publicity hound. Indeed, even on the floor of the House, Representative Marion Zioncheck called Hoover "the master of fiction."<sup>50</sup> McKellar's questioning expanded into Hoover's proposed increase to the FBI's budget, asking the director to justify the incredible amounts he requested.

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<sup>47</sup> United States Congress, Senate, Subcommittee of the Committee on Appropriations, *Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1937. Hearings*, 74th. Cong., 2nd. Sess. (Washington, D.C.: United States Government Printing Office, 1936), 161-162

<sup>48</sup> United States Congress, Senate, Subcommittee of the Committee on Appropriations, *Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1937. Hearings*, 74th. Cong., 2nd. Sess. (Washington, D.C.: United States Government Printing Office, 1936), 163.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Congressional Record* v. 80, 74th. Cong., 2nd. Sess. (3 January 1936-20 June 1936), 5734.

When Hoover next testified before McKellar's committee on April 11, 1936, McKellar asked why his Bureau needed \$5,000,000 for fiscal year 1937, almost double the 1934 appropriation. Hoover responded that the FBI's work had increased owing to the passage of the crime bills. McKellar conceded that passage of these bills had increased the Bureau's jurisdiction, but he questioned whether the Bureau had used this increase effectively. Many of the cases that Hoover cited in the House, McKellar pointed out, were actually solved by other departments.<sup>51</sup> Hoover responded by focusing on the statistics his Bureau carefully prepared. He told the Senator that he had to "consider, furthermore, that the average of convictions in all our cases has been 94 percent. The average of convictions by local law-enforcement agencies is 35 percent. In kidnapping cases we have solved 62 since July 1932 resulting in 136 convictions with penalties of 1,853 years and 28 life sentences." The Bureau, Hoover added had also returned \$38,000,000 in fines, recoveries, and savings to the Treasury, compared to a budget of \$4,500,000.<sup>52</sup>

Another of Hoover's preferred tactics when cornered by members of Congress was to resort to fear. Asked by Senator Frederick Hale what would happen if word got around that Congress had withdrawn appropriations to battle kidnapping, Hoover responded that America would see "a wave of kidnapping" immediately and "it would cripple law enforcement and place a premium on lawlessness."<sup>53</sup> An unconvinced Senator McKellar then began to question Hoover's qualifications. His questions undoubtedly disturbed the FBI Director, who had come to see himself as the preeminent law-

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<sup>51</sup> *Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1937. Hearings*, 169-172. The cases McKellar mentioned included the Bruno Hauptmann case.

<sup>52</sup> *Ibid.*, 172

<sup>53</sup> *Ibid.*, 186.

enforcement officer in the nation. McKellar specifically asked if Hoover had ever made an arrest. Hoover responded that he had “made investigations,” including those of Emma Goldman, Alexander Berkman, and Ludwig Martens during the Palmer Raids of 1919. McKellar pointed out that Hoover had never arrested these individuals, though. Hoover could only respond that Congress had not given the Bureau the power to arrest anyone until 1935.<sup>54</sup> Reacting to this challenge to his authority, Hoover told Edward Tamm, an assistant director of the Bureau, that he was to be notified immediately when the gangster Alvin “Creepy” Karpis had been located so he could participate in the arrest. On April 30, 1936, mere weeks after his appearance before McKellar, Hoover flew to New Orleans and personally arrested Karpis (according to the official story, at least). Newspaper headlines trumpeted Hoover’s actions; Hoover had struck back at Senator McKellar by making his first arrest.<sup>55</sup>

During Senate floor debate about the appropriations bill, Republican Senator Arthur Vandenberg sought to exploit this opportunity to embarrass the New Deal’s proponents and the Democrats. He asked why the appropriation for the Bureau of Investigation had been reduced, hoping to paint McKellar as a miser who would unwittingly unleash the forces of kidnapping upon the nation.<sup>56</sup> This decrease, Vandenberg told his fellow senators, seemed a “peculiar and a queer place to start” looking to spend less money.<sup>57</sup> He went on to argue that “the American people want the G-men to have every equipment and facility which they believe they need in their war upon major crime. They do not want our first line of defense weakened. This is one place

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<sup>54</sup> Ibid., 199.

<sup>55</sup> Gentry, 192-193.

<sup>56</sup> Ibid., 193.

<sup>57</sup> *Congressional Record* v. 80, 74th. Cong., 2nd. Sess. (3 January 1936-20 June 1936), 5856.

where, in my humble judgment, economy is false economy and where we are invited into penny-wisdom and pound-foolishness.”<sup>58</sup> Democratic members of the Senate quickly came to the aid of Hoover and the Bureau, leaving McKellar hanging in the wind. One remarked that “the American people do not want this item in this appropriation bill decreased. I want to say further that there is not a single group of organized criminals in America who will not breathe easier if they find a disposition in the Congress to whittle down the appropriation for this Bureau.”<sup>59</sup> Another said that he “would not revive, by any act or vote of mine, one hope in the bosom of a gangster by withholding the means that are necessary to pursue him around this earth, to the very gates of hell, if possible, and to wrestle with him for his liberty or his blood.”<sup>60</sup> With this lack of support, the Senate rejected McKellar’s amendment to decrease the Bureau’s appropriation by \$225,000, an amount approved by the House. The Bureau received the entirety of its requested budget.

Increasingly after 1936, the Roosevelt administration began to focus more on the security problems emanating from Europe. Nazi Germany had begun its steady advance on the European continent and Roosevelt viewed these Nazi successes as having possible subversive consequences for the United States. In a secret 1934 directive, Roosevelt authorized a limited investigation into the activities of American Nazis and sympathizers. Over the next two years, Roosevelt requested FBI reports on other fringe Nazi-type organizations like the Silver Shirts, the Knights of the White Camelia, and the Coughlinite Christian Front.<sup>61</sup> From this point on, Roosevelt issued a series of secret directives to the FBI, granting the Bureau increasing power over internal security.

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<sup>58</sup> Ibid., 5857.

<sup>59</sup> Ibid., 5858.

<sup>60</sup> Ibid., 5860.

<sup>61</sup> Theoharis and Cox, 148-149.

Because of the secrecy of these directives, members of Congress had no opportunity to offer their input beforehand. Roosevelt had taken executive powers to new heights because of the threat of subversion at a time of pending war. Hoover exploited these new powers, even using them in ways that Roosevelt did not intend. Rather than focusing on Nazi sympathizers in the United States, Hoover broadened FBI investigations into left-and right-wing critics of the president, including members of Congress and prominent American citizens like Charles Lindbergh. When confronted by criticism of known FBI operations, Hoover used the tried-and-true methods of fear and scapegoating to rebuff his accusers.

Pursuant to Roosevelt's 1934 directive, Hoover began FBI investigations of subversive groups. These investigations became much more pronounced in the aftermath of an August 1936 meeting between Roosevelt and Hoover. At this meeting at the White House, Roosevelt conveyed to Hoover his concern about the movements of Communists and Fascists within the United States. Told that no governmental organization currently gathered any "so-called 'general intelligence information'" at that time, Roosevelt solicited Hoover's suggestions. The FBI Director told the President that the FBI could conduct such an investigation at the request of the State Department under language of a 1916 Bureau appropriations statute. When asked, the next day, at a second White House meeting, if he would make such a request, Secretary of State Cordell Hull agreed to do so. Both Hoover and Roosevelt, nonetheless, felt it best that no formal, written request be made of this decision to expand the FBI's responsibilities beyond law enforcement to encompass conducting intelligence investigations. Instead, Roosevelt stated that he would

keep a handwritten memo in his own safe.<sup>62</sup> Hoover subsequently, but belatedly briefed Attorney General Cummings on the president's request, expanding upon the president's words by saying the request was for "an investigation...of the subversive activities in this country, including communism and fascism." Hoover in effect took Roosevelt's request for a limited investigation of foreign-controlled activities within the country and expanded it to include all suspected subversive activities, which was a broader term than counter-espionage or counter-sabotage. In response, Cummings "verbally directed" Hoover to "proceed with the investigation," which should "be handled in a most discreet and confidential manner."<sup>63</sup> With the attorney general's support and at the president's request, the FBI was now empowered to investigate subversion within the United States. Roosevelt had found Hoover a useful source of information, not only against potential enemies to the nation, but also about potential enemies to his administration.

President Roosevelt, who trusted Hoover's ability to keep secrets, soon began to forward to the FBI Director names of those who publicly opposed his controversial foreign policies.<sup>64</sup> Hoover acted quickly on these presidential requests and began noting the names and addresses of those cited by the White House in order to increase the FBI's "unauthorized—if passive—monitoring of the anti-interventionists."<sup>65</sup> Hoover also sent unsolicited reports to the president on topics ranging from the potential for a long Senate debate about Lend-Lease, unfounded accusations of disloyalty against Senator Gerald

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<sup>62</sup> Confidential Memo by Hoover, 24 August 1936 and 25 August 1936, Hoover OC Files. For a more general examination of this directive, see Theoharis and Cox, 150-152.

<sup>63</sup> Memo for Mr. Tamm from Hoover, 10 September 1936, Hoover OC Files.

<sup>64</sup> Memo from Stephen Early to Hoover, 21 May 1940, Official File 10B: Justice Department, FBI; Folder: Justice Department, FBI, 1940, FDR Library.

<sup>65</sup> Charles, 44.

Nye, and the cooperation between the Bureau and military intelligence agencies.<sup>66</sup> More ominously, Hoover investigated Roosevelt's foreign-policy opponents, even telling the president the plans of the America First Committee. One such plan, discovered from "information of a strictly confidential character," was for "Senators, Congressmen, and various peace and patriotic organizations [to] travel throughout the United States to reach all areas for the purpose of opposing any plans that the President might have in bringing this country into war."<sup>67</sup> Hoover correctly surmised that Roosevelt would be interested in this information. Hoover used any avenue that agents could employ to develop this information, including recruiting politically connected past associates and the installation of illegal wiretaps.

One of Hoover's sources of political information was Henry Grunewald, a self-employed private detective who had worked with the Bureau during World War I. Grunewald had developed strong political connections with the opponents of President Roosevelt and was even investigated at the request of the White House.<sup>68</sup> Roosevelt's secretary, Stephen Early, requested "a comprehensive investigation...be made of the allegations indicating some irregularities on the part of Henry Grunewald."<sup>69</sup> Early had received information that Grunewald was "in cahoots" with Senator Gerald Nye, one of the leading congressional isolationists, and that Grunewald "was the head of a Nazi

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<sup>66</sup> Hoover to Edwin Watson, 21 February 1941, FBI Report 655-A, Folder: Justice Department, FBI Reports 636-675, 1941; Hoover to Stephen Early, 9 July 1940, FBI Report 146-A, Folder: Justice Department, FBI Reports 113-164A, 1940; Hoover to Watson, 6 July 1940, FBI Report 198, Folder: Justice Department, FBI Reports 165-209, 1940; all Official File 10B: Justice Department, FDR Library.

<sup>67</sup> Hoover to Watson, 19 March 1941, FBI Report 690, Official File 10B: Justice Department; Folder: Justice Department, FBI Reports 676-699, 1941, FDR Library.

<sup>68</sup> Theoharis, "FBI Wiretapping: A Case Study of Bureaucratic Autonomy," 107.

<sup>69</sup> Hoover to Stephen Early, 9 July 1940, FBI Report 146-A, Official File 10B: Justice Department, FBI; Folder: Justice Department, FBI Reports 113-164A, 1940, FDR Library.

espionage system in Washington, D.C.<sup>70</sup> Hoover assured Early that well-qualified agents would examine this unsupported allegation.<sup>71</sup> FBI officials received similar information from military intelligence in 1941, and this time they placed a series of wiretaps on Grunewald's telephone, reinstating a tap on Grunewald again in 1946. It is unclear whether the White House had been briefed about the 1941 wiretap, but it undeniably benefited from the invaluable political intelligence acquired through the taps.<sup>72</sup> Grunewald, moreover, even gave unsolicited information to Bureau officials, at one time stating that Senator Wheeler was not an enemy of the director's and that Senator Nye's opposition to Roosevelt's policies would be reversed if the Nazis overtly attacked the United States.<sup>73</sup> Yet, despite the confidential information intercepted through the Grunewald tap, no information was uncovered to substantiate the espionage claims. Instead, the Bureau tap and investigation collected useful political information about Roosevelt's opponents.<sup>74</sup>

In September 1939, with war escalating Europe, President Roosevelt issued another directive expanding the powers of the FBI, believing the United States needed to ensure the nation's protection. The Bureau widely publicized this new directive. The FBI had been ordered to "take charge of investigative work in matters relating to espionage, sabotage, and violations of the neutrality regulations." Urged by Hoover, who was troubled by a State Department plan to create an interdepartmental committee to coordinate domestic intelligence investigations, Roosevelt ordered that all such

<sup>70</sup> Memorandum to Stephen Early, 8 July 1940, FBI Report 146-A, Official File 10B: Justice Department, FBI; Folder: Justice Department, FBI Reports 113-164A, 1940, FDR Library.

<sup>71</sup> Hoover to Early, 27 June 1940, FBI Report 146-A, Official File 10B: Justice Department, FBI; Folder: Justice Department, FBI Reports 113-164A, 1940, FDR Library.

<sup>72</sup> Theoharis, "FBI Wiretapping: A Case Study of Bureaucratic Autonomy," 107.

<sup>73</sup> Memorandum for the Director, 31 July 1941; Memorandum for the Director, 8 October 1941, Hoover OC Files.

<sup>74</sup> Charles, 51.

information should be sent to the FBI in order to create a comprehensive and effective national strategy.<sup>75</sup> For at least the preceding five years, Hoover had created an intelligence-gathering apparatus in his Bureau and was, by then, unwilling to see it folded into the operations of another department. Hoover's success in pressing the president to make the Bureau the collector of subversive information effectively increased the power of the FBI without Congressional approval. During his testimony before the House Appropriations Committee in November 1939, however, the director almost destroyed the foundations he had built during the mid-1930s.

In this November 30, 1939 testimony before the House Appropriations Committee, Hoover admitted that he had organized a General Intelligence Division the preceding September. This division "compiled extensive indices of individuals, groups, and organizations engaged in subversive activities, in espionage activities, or any activities that are possibly detrimental to the internal security of the United States." Furthermore, he testified, "the indexes have been arranged not only alphabetically but also geographically, so that at any rate, should we enter into the conflict abroad, we would be able to go into any of these communities and identify individual or groups who might be a source of grave danger to the security of this country. Their backgrounds and activities are known to the Bureau. These indexes will be extremely important and valuable in a grave emergency."<sup>76</sup> Hoover's admission almost immediately precipitated questions about these actions in the House and Senate.

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<sup>75</sup> Memo to All Law Enforcement Officers from Hoover, 6 September 1939, Hoover OC Files; Theoharis and Cox, 153-154

<sup>76</sup> Quoted by Representative Vito Marcantonio, *Congressional Record* v. 86, 76th Cong., 3rd. Sess.: 3 January 1940-3 January 1941 (Washington D.C.: United States Government Printing Office, 1941), 292. In all likelihood, Hoover had recreated the General Intelligence Division as early as 1934, not in 1939 as he had testified.

Complaints about the Bureau's actions began with New York Representative Vito Marcantonio, a member of the American Labor Party. In a speech on the floor of the House, Marcantonio complained that "when the activities of the FBI are extended to what to me smacks very much like the activities of a Gestapo or any of the so-called intelligence bureaus that exist in dictator countries...Members of Congress should pause and examine this situation very closely." Hoover's recreation of the General Intelligence Division, Marcantonio argued, created an "index-card menace to American liberty." He concluded by reintroducing the specter of the Palmer Raids, as Hoover's actions could "constitute a real serious menace to civil liberties in the United States."<sup>77</sup> Marcantonio's speech ended with applause, but the House failed to follow up on his charges. Nonetheless, a more substantial threat emerged in the Senate.

Beginning in February 1940, the progressive independent senator from Nebraska, George Norris, questioned the activities of the FBI. Discussing, at this time, the Bureau's appropriations request, Norris admitted he was "worried about the activities of this Bureau." He then spoke of potential illegalities that Bureau agents had committed when arresting members of the Abraham Lincoln Brigade in Detroit and Milwaukee. These members had enlisted as soldiers to fight on the side of the Loyalists in the Spanish Civil War. Fighting against fascism, these volunteers had allied with leftist forces, including the Soviet Union. Because of their illegal participation in a foreign war, they were arrested by FBI agents in a series of dramatic raids. Norris conceded that the Brigade members' military actions were illegal, but he condemned the methods employed by FBI

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<sup>77</sup> *Congressional Record* v. 86, 76th. Cong., 3rd. Sess.: 3 January 1940-3 January 1941 (Washington D.C.: United States Government Printing Office, 1941), 292

agents when arresting them as a violation of their civil liberties.<sup>78</sup> In one case in Detroit, the men (and one woman) had been rounded up in the middle of the night, handcuffed in a chain, and marched into a police station. There, they were held with high bail, unable to contact family.

Norris's criticisms (repeated in the press, notably in the *Milwaukee Journal*) were almost immediately rebuffed by other members of Congress. One senator spoke about the lengths the Bureau went to in order to eliminate "the romance which...seemed to cluster around gangsters."<sup>79</sup> A member of the House told his colleagues that "when the FBI returns almost \$8 for every dollar it spends, through collection of fines and the restoration of property, we, as Members of Congress, should think carefully before we hastily criticize such a great law-enforcement agency of the Federal Government."<sup>80</sup> Others entered into the *Congressional Record* letters from their constituents supporting Hoover and the FBI.<sup>81</sup> Norris refused to back down, however, and the debate about the Bureau's actions toward the Abraham Lincoln Brigade continued.

When discussing Norris's charges against the Bureau, some senators hinted that radical forces were exploiting the incident in an attempt to undermine the Bureau's effectiveness. Alexander Wiley, a Democrat from Wisconsin, told his colleagues that left-wing groups were behind this attempt to discredit the Bureau in order to "undermine its vigilant enforcement of Federal statutes."<sup>82</sup> Senator Henry Styles Bridge similarly characterized the purpose of the attacks on the Bureau as intended to "destroy another American citadel of faith and decency" and of having been led by "the radical forces, the

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<sup>78</sup> Ibid., 1981.

<sup>79</sup> Ibid., 2146.

<sup>80</sup> Ibid., 2443.

<sup>81</sup> Ibid., 4985.

<sup>82</sup> Ibid., 4987.

false liberals, and the 'pinks' throughout the country.... Around Washington my colleagues know as well as I there are rumors that prominent new dealers are using some of these radical elements to 'get' J. Edgar Hoover."<sup>83</sup>

Senator Norris defended himself from charges of radicalism, denying that he was trying to smear Hoover. Instead, he argued he was merely defending the civil liberties of American citizens.<sup>84</sup> In fact, Norris was fully aware of the popularity of the FBI and the power of its defenders but was nonetheless willing to continue his charges.<sup>85</sup> Most vociferously, Norris charged that Hoover was "the greatest hound for publicity on the American continent today."<sup>86</sup> Hoover was advertising his exploits and "doing more injury to honest law enforcement in this country by his publicity-seeking feats than is being done by any other one thing connected with his organization.... Unless we do something to stop this furor of adulation and praise as being omnipotent, we shall have an organization—the organization of the FBI—which, instead of protecting our people from the evil acts of criminals, will itself in the end direct the Government by tyrannical force."<sup>87</sup> An exasperated Norris concluded that these claims were his "humble judgment—probably no one will pay attention to it, but at least I shall know that I have expressed it."<sup>88</sup>

Further debate about the FBI's role arose after President Roosevelt introduced a plan to reorganize the executive branch. In a May 1940 message to Congress, Roosevelt wrote that, due to international events, there was a "pressing need for the transfer of the

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<sup>83</sup> Ibid., 5064.

<sup>84</sup> Ibid., 4988.

<sup>85</sup> Ibid., 5645.

<sup>86</sup> Ibid., 5663.

<sup>87</sup> Ibid., 5664.

<sup>88</sup> Ibid.

immigration and naturalization functions from the Department of Labor to the Department of Justice.” Such a transfer would reduce expenditures, increase efficiency, consolidate agencies that had similar functions, and eliminate duplication of effort. Roosevelt conceded that this reorganization was controversial, but said that “while it is designed to afford more effective control over aliens, this proposal does not reflect any intention to deprive them of their civil liberties or otherwise to impair their legal status. This reorganization will enable the Government to deal quickly with those aliens who conduct themselves in a manner that conflicts with the public interest.”<sup>89</sup> Just as some had questioned the re-creation of the General Intelligence Division, Roosevelt’s proposed reorganization plan sparked debate. It reminded some members of Congress of the perils associated with the 1920 Palmer Raids. To them, the executive branch seemed intent on increasing its powers even before the United States was involved in any international conflict.

When discussing the president’s proposal, Senator Burton Wheeler assured his colleagues that he appreciated “that it would not do any good to oppose the measure, but I feel it would be a very great mistake to turn the Immigration and Naturalization Service over to the detective bureau in the Department of Justice.”<sup>90</sup> Reciting his personal history with the Bureau, how he and his family had been the subject of raids and surveillance, Wheeler concluded that no man “placed in a detective service” could avoid becoming “the snooping detective type.”<sup>91</sup> Concurring, Senator Norris laid the blame for the Palmer

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<sup>89</sup> Press Release 1486, 22 May 1940, Papers of Stephen T. Early, Book 2: Press Statements 1418-1538, January 3-June 29, 1940, FDR Library.

<sup>90</sup> *Congressional Record* v. 86, 7200.

<sup>91</sup> *Ibid.*

raids at Hoover's feet and charged that the Bureau would resort to similar tactics with these new responsibilities.<sup>92</sup>

Senator Wiley, once again, came to the Bureau's defense, denying that J. Edgar Hoover had anything to do with the Palmer Raids, and asserting that Hoover had instead acted only as a prosecutor of the offenders. Rather than dredging up the past, the Senate was "talking about something more precious than the injuries of yesterday. We are talking about this America of ours, which must have something virile in her being; this America, which must have power also to strike down the aggressor; which must have the power necessary to protect your civil liberties and mine."<sup>93</sup> Senator Harry Byrd concurred, arguing that Hoover "can do much to control alien activities in this country."<sup>94</sup>

Behind the scenes, Hoover sought to exploit any opportunity to discredit his opponents and aid those members of Congress who supported the Bureau. Hoover, in fact, coined the phrase "smear campaign" to describe the attacks aimed at him. Quickly, Bureau officials tried to link their opponents with radicalism throughout the country in an effort to undermine their critics. They took particular pain to show that Norris was untrustworthy.

The Bureau's attacks against Senator Norris began with claims that he had falsely accused the Bureau of stealing documents from his personal safe in 1931. Bureau officials had begun an investigation of Robert Lucas, the executive director of the Republican National Committee, based on a complaint by Norris. When interviewed by the Bureau, Lucas retaliated by accusing Norris of a similar crime. When the same agent interviewed Norris, he was told about the countercharge. According to the agent's report,

<sup>92</sup> Ibid., 7260-7261.

<sup>93</sup> Ibid., 7284-7285.

<sup>94</sup> Ibid., 7287.

Norris then accused the Bureau of investigating him, not Lucas. When material from his safe was discovered to have been missing, Norris's only clue was that an agent had been sent during the investigation to find information to discredit him. Bureau officials denied any knowledge, emphasizing that there was no evidence that any agent had accessed Norris's safe. Hoover was reminded of this earlier episode after Norris made his charges in the Senate.<sup>95</sup> Hoover also asked Attorney General Robert Jackson to make public his findings in the Abraham Lincoln Brigade case, as Norris continued to make speeches "attacking the Federal Bureau of Investigation and, in particular, myself." Hoover was worried these speeches would be carried widely in the nation's newspapers without an official reply from the Department.<sup>96</sup> Bureau agents also investigated claims that Norris had been involved in a questionable judicial election in Nebraska. Upon investigation, however, the claim proved baseless.<sup>97</sup>

FBI agents closely monitored Norris's activities on Capitol Hill and had apparently recruited an informer inside the senator's office. Through this informer, Bureau officials obtained advance intelligence about the type of mail Norris received, many of which were "complaints...of mishandling cases and violations of civil rights." To preclude any possible congressional investigation, the informant told assistant director H.H. Clegg that "when the Attorney General finally replies to Senator Norris he [should] admit human frailty and occasional error because of the human element and state in general effect that from this lesson much has been learned and the Department will be careful in the future." The informant emphasized the need to avoid an investigation

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<sup>95</sup> Memo for the Director from E.A. Tamm, 6 March 1940, Nichols Official and Confidential File, Marquette University Archives. Hereafter, Nichols OC Files.

<sup>96</sup> Memo for the Attorney General from Hoover, 25 April 1940, Nichols OC Files.

<sup>97</sup> SAC C.W. Stein, Omaha, Nebraska, to Hoover, 3 August 1940, and Memo for Mr. Tolson from R.C. Hendon, 3 September 1940, Nichols OC Files.

because “once charged with a violation complete vindication [will] not remove all blemish.”<sup>98</sup> Furthermore, Bureau officials seemed to have developed a source inside the Senate Document Room, as they had been briefed that Norris was examining certain files “for the purpose of preparing a tirade against the Bureau.”<sup>99</sup> These confidential sources claimed Norris was “engaged in preparing material for a blast at the Bureau and that he had been reviewing all of the annual reports of the Attorney General back as far as 1911 in order to secure material for the blast.”<sup>100</sup> Bureau officials were convinced, however, that the true purpose behind Norris’s accusations was to help the Communist Party. Indeed, Hoover reported to the Attorney General that leaders of the Communist Party had discussed the smear campaign, hoping “to get enough on some one in the FBI to put them in jail.” Party leaders would offer false information to the Bureau, hoping to put an agent in a compromising position.<sup>101</sup> With the Bureau discredited, the nation’s radicals could thrive.

Having obtained this advance information charting Norris’s plans, Bureau officials turned to their defenders in the Senate. A Bureau official thus told Senator Wiley that Norris’s claims were ridiculous and that Congress could oversee the Bureau through the appropriations committees. Senator Patrick McCarran also told the Bureau he disagreed with Norris and that Hoover had “friends in the Senate who would like to defend his organization.”<sup>102</sup> Bureau officials, moreover, could count on willing members of the press to defend their conduct. Norris’s charges soon diminished as the war effort

<sup>98</sup> Memo for the Director from H.H. Clegg, 3 April 1940, Nichols OC Files.

<sup>99</sup> Memo for the Director from E.A. Tamm, 30 December 1940, Nichols OC Files.

<sup>100</sup> Memo for the Director from E.A. Tamm, 6 December 1940, Nichols OC Files.

<sup>101</sup> Memo for the Attorney General from Hoover, 10 April 1940, Nichols OC Files.

<sup>102</sup> Memo for Mr. Tolson from Hoover, 27 April 1940; Memo for the Director from H.H. Clegg, 30 May 1940, Nichols OC Files.

increased. Members of Congress were willing to overlook civil rights violations and the FBI's increasing power so long as the nation was secure from foreign radicals. In this way, Bureau officials successfully overcame objections and were able to increase the FBI's role in domestic intelligence. A prime example of this increasing power involved the national debate over wiretapping. This issue underscores most clearly the increasing power of the executive branch over Congress. President Roosevelt secretly authorized the Bureau to wiretap in cases of national security without telling Congress, at the very time when that very issue was being debated. By acting secretly and avoiding Congress, the president gave the Bureau tremendous power without establishing clear oversight to ensure that power stayed within constitutional limits.

As a case study, wiretapping offers important insight into the changing relationship between the executive branch, Congress, and the FBI. Prior to the 1930s, many of the Bureau's actions were initiated in response to the enactment of new laws. The Mann Act of 1910, the Dyer Act of 1919, and the 12-Point Crime Program of 1934-35 increased the Bureau's activities. In contrast, in 1934 Congress had enacted legislation making wiretapping illegal. Subsequent attempts in 1940-1942 to amend the Federal Communications Act to legalize FBI wiretapping in "national security" cases were unsuccessful, even when supported by the president and attorney general. The FBI's wiretapping authority was issued by President Roosevelt. His directive had also sought to ensure that the attorney general closely monitored the FBI's wiretaps. This system broke down as Bureau officials eventually used their own authority to choose their targets. A

preference for executive directive instead of legislation, and a penchant for secrecy, enabled Bureau officials to expand the FBI's powers without congressional oversight.<sup>103</sup>

One of the first Congressional investigations of wiretapping occurred in February 1931. The House Committee on Expenditures in the Executive Departments heard testimony from Attorney General William Mitchell about the use of wiretapping in law enforcement. Mitchell testified that the Bureau of Investigation had been banned from wiretapping in 1928, but that the transfer of the Prohibition Unit in 1930 had required a reexamination of this policy. Mitchell did not want the Department to have "one bureau in which wire-tapping is allowed and another in which it is prohibited."<sup>104</sup> Looking to the States and other federal agencies, Mitchell determined that "wire tapping is generally used by police agencies all around the country."<sup>105</sup> Congress foreclosed this method of investigation in 1934; however, the Justice Department did not cease using the technique.

In 1934 Congress passed the Federal Communications Act, which forbade any person to "intercept, any [wire or radio] communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepting communication to any person."<sup>106</sup> Importantly, "no mention of wiretapping occurred during the floor debate leading to the passage of this bill, during committee hearings, or in committee reports."<sup>107</sup> Justice Department officials, nonetheless, assumed this ban did not apply to federal agents and continued the practice. This interpretation was rejected by the Supreme Court in the 1937 case *Nardone v. United States*, ruling that federal agents

<sup>103</sup> Theoharis, "FBI Wiretapping: A Case Study of Bureaucratic Autonomy," 102.

<sup>104</sup> United States Congress, House, Committee on Expenditures in the Executive Departments, *Wire Tapping in Law Enforcement. Hearings.* (Washington, D.C.: United States Government Printing Office, 1931), 2. Hereafter, *Wiretapping in Law Enforcement Hearings*.

<sup>105</sup> *Ibid.*, 23.

<sup>106</sup> Theoharis and Cox, 169-170.

<sup>107</sup> Neal Katyal and Richard Caplan, "The Surprisingly Stronger Case for the Legality of the NSA Surveillance Program: The FDR Precedent," *Stanford Law Review* 60 no. 1023 (2007-2008): 1037-1038

were not exempted. In a 1939 companion case, the Supreme Court ruled that information discovered through an illegal wiretap irrevocably tainted a court case, necessitating a dismissal.<sup>108</sup>

Reacting to the Court's 1937 decision, special assistant to the attorney general Alexander Holtzoff remarked that the only question that had been decided was whether a federal officer could testify in open court about information received from a wiretap. Because the law prohibited interception and divulgence, officers could still implement taps so long as the information was not divulged.<sup>109</sup> Department of Justice officials privately debated how best to fit this policy with the law. Holtzoff told Attorney General Cummings that no public statement should be made about the Department's policy because any statement had to include the fact the Department still tapped wires in certain cases, which might "evoke hostile comments from papers and periodicals" and might "lead some Member of Congress who believes in sedulously conserving individual rights, to introduce a bill that would extend the scope of the *Nardone* decision, which would be an undesirable consummation."<sup>110</sup> Instead, the attorney general should write a memorandum to Hoover describing the department's policy in the wake of *Nardone*. The contents of that memo were hotly debated. Some in the department wanted wire tapping decisions to be made by Hoover and an assistant attorney general. Hoover, on the other hand, felt it best if only his approval was necessary.<sup>111</sup> The Department adopted Hoover's policy. By March 1940, however, Hoover and Attorney General Robert Jackson had

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<sup>108</sup> Theoharis, "FBI Wiretapping: A Case Study of Bureaucratic Autonomy," 104.

<sup>109</sup> Memo for the Attorney General from Alexander Holtzoff Re: Decision of the Supreme Court on wire tapping, 27 December 1937, Folder: Wire Tapping, Cummings Papers.

<sup>110</sup> Memo for the Attorney General from Alexander Holtzoff Re: Wire Tapping, 25 January 1938, Folder: Wire Tapping, Cummings Papers.

<sup>111</sup> Ibid.

revised the Bureau's operations manual to conform to the pre-1931 policy of refusing to tolerate unethical tactics such as wiretapping.<sup>112</sup> With this policy in place, President Roosevelt soon stepped to the fore, crafting his own policy about wiretapping to meet perceived threats to national security.

On May 21, 1940, Roosevelt authorized wiretapping, concluding that "the Supreme Court never intended any dictum...to apply to grave matters involving the defense of the nation." To confront propaganda and "fifth-column" activities in other nations, Roosevelt's secret directive authorized FBI agents "to secure information by listening devices direct to the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including suspected spies. You are requested furthermore to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens."<sup>113</sup> To ensure these investigations did not go too far, Roosevelt required the attorney general's advance approval of each national defense wiretap. The attorney general almost immediately undermined that requirement. Attorney General Robert Jackson informed Hoover of his intent to "have no detailed record kept containing the cases in which wiretapping would be utilized." Instead, Hoover was to "maintain a memorandum book in my immediate office, listing the time, places, and cases in which this procedure is to be utilized."<sup>114</sup> Roosevelt's secret authorization of wiretapping, and Jackson's hesitancy to adopt procedures to ensure effective departmental oversight (by maintaining records of his approval and limiting the duration of approved taps after which his reauthorization would

<sup>112</sup> 15 March 1940 Press Release, Hoover OC Files.

<sup>113</sup> Memorandum for the Attorney General from President Franklin D. Roosevelt, 21 May 1940, Hoover OC Files.

<sup>114</sup> Memorandum for the Confidential Files, 28 May 1940, Hoover OC Files.

be required) expanded the powers of the Bureau, but also created the potential for abuse. Congress was not aware of this policy even though, in the succeeding two years several committees attempted to craft emergency legislation that would have had a similar effect. Members of Congress were, therefore, unaware they were working to change wiretapping policy that Roosevelt had already altered of his own accord.<sup>115</sup>

Congress held three different hearings about wiretapping from 1940 to 1942. The first, held by the House Judiciary Committee in June 1940, would have allowed wire tapping for national defense purposes. Introduced by Congressman Emanuel Celler and supported by Attorney General Jackson, the law would relax the rules regarding wiretapping, making it easier for the Bureau to “ascertain, prevent, and frustrate any interference or attempts or plans to interfere with the national defense by sabotage, espionage, violations of neutrality laws, or in any other matter.”<sup>116</sup> Celler admitted the bill came from the Attorney General and was necessary to combat the fifth column or those who would undermine national defense.<sup>117</sup> Alexander Holtzoff testified that the attorney general felt that this privilege must be used with proper care, not to invade anyone’s privacy.<sup>118</sup> Celler was convinced that wiretapping was the only way the nation could be protected, as “Mr. Hoover told me personally that he is stumped; that these spies are in great numbers in the United States at this very moment, doing their foul and damnable work, undermining our morale, and interfering with our national defense. He

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<sup>115</sup> Katyal and Caplan, 1052.

<sup>116</sup> United States Congress, House, Subcommittee No. 1 of the Committee on the Judiciary, *Wire Tapping for National Defense. Hearings*. 76th Cong., 3rd. Sess on H.J. Res. 553, A Joint Resolution to Authorize the Federal Bureau of Investigation of the Department of Justice to Conduct Investigations in the Interests of National Defense, and for that Purpose to Permit Wire Tapping. Subsequently Amended, Reintroduced and Reported as H.J. Res 571, June 12, 1940 (Washington, D.C.: United States Government Printing Office, 1940), 1. Hereafter, *Wiretapping for National Defense House Hearings* (1940).

<sup>117</sup> Ibid., 3-4

<sup>118</sup> Ibid., 5.

says he cannot apprehend them and cannot get the proper evidence against them to convict them without wire tapping.”<sup>119</sup> Celler also wrote to President Roosevelt asking for his help in getting the bill out of the House Rules Committee by pressuring the Speaker or Majority Leader Sam Rayburn.<sup>120</sup>

Members debated Celler’s resolution on the floor of the House. Celler championed the resolution, arguing wiretapping was necessary because of the national emergency. The Bureau, he said, had only used wiretapping “in connection with the investigations of grave crimes, such as kidnapping and extortion.” Now, those “inimical to the existence of our democratic government must be tracked down” and wiretapping was the only possible method.<sup>121</sup> He alluded to the fifth column and their pernicious activities in Europe, hoping his colleagues would see that, in an emergency, certain individual liberties had to be sacrificed.<sup>122</sup> Some representatives opposed this resolution, claiming that its passage would lead to a “New Deal wire-tapping Gestapo or OGPU in the United States,” which would create a dictatorship in the United States. Civil liberties had to be defended, especially in times of national emergency.<sup>123</sup> While this resolution was passed, Congress never enacted legislation to legalize FBI national security wiretapping. At the next Congressional session, the House Judiciary Committee again heard testimony regarding wiretapping. Hoover followed this debate, arguing for certain changes to the proposed legislation but never mentioning the president’s directive which already allowed wiretapping in national security cases.

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<sup>119</sup> *Congressional Record* v. 86, 76th Cong., 3rd. Sess: 3 January 1940-3 January 1941 (Washington, D.C.: United States Government Printing Office, 1941), 9950.

<sup>120</sup> Congressman Emanuel Celler to Franklin D. Roosevelt, 3 July 1940, Official File 10B: Justice Department, FBI; Folder: Justice Department, FBI, 1940, FDR Library.

<sup>121</sup> *Congressional Record* v. 86, 9950.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid., 9946.

In February 1941, members of the House Judiciary Committee listened to several perspectives on wiretapping. Congressman Francis Walter argued wiretapping should be controlled by the courts, just like a search warrant, and be limited to national defense cases.<sup>124</sup> Alexander Holtzoff countered that the bill offered protection for national security with practical restraints against abuse.<sup>125</sup> Congressman Sam Hobbs also argued that members of the executive branch should initiate wiretapping because these people were “responsible” and had “some respect for his oath of office and for the law that he is sworn to enforce.” This law, he concluded, eliminated “a mistaken idea of what the Supreme Court meant.”<sup>126</sup>

J. Edgar Hoover also gave a statement to the committee, expressing that he opposed “uncontrolled and unrestrained wire tapping by law-enforcement officers. Moreover, I have always been and am now opposed to the use of wire tapping as an investigative function except in connection with investigations of crimes of the most serious character, such, for example, as offenses endangering the safety of the Nation or the lives of human beings. I also feel that world developments of the past year or more, and the changed conditions resulting therefrom, have increased the gravity from the standpoint of national safety of such offenses as espionage and sabotage.”<sup>127</sup> Following Hoover’s statements, several witnesses testified about the dangers of wiretapping. One, Eugene Connolly, the chairman of the American Labor Party of New York County, feared openly that Congress was giving away too much of its powers.

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<sup>124</sup> United States Congress, House, Subcommittee No. 1 of the Committee on the Judiciary, *To Authorize Wiretapping. Hearings*. 77th. Cong., 1st. Sess. On H.R. 2266 and H.R. 3099 Bills Relating to the Interception of Telephone, Telegraph, Radio, and any Other Similar Messages or Communications, and for Other Purposes, February 3, 10, 12, 17, 19, 24, and 26, 1941 (Washington, D.C.: United States Government Printing Office, 1941), 2-4. Hereafter, *To Authorize Wiretapping Hearings*.

<sup>125</sup> *Ibid.*, 5, 7.

<sup>126</sup> *Ibid.*, 21, 24.

<sup>127</sup> *Ibid.*, 112.

“No police agency,” Connolly told the committee, “has ever been entrusted by Congress with investigating powers which were broader than Congress’ own.... Yet Congress has never once stooped to wire tapping, although its investigations have been made difficult by contumacious witnesses, destruction of evidence, and so forth.”<sup>128</sup> Congress could be trusted with investigatory powers because it was bi-partisan and directly responsible to the people. Granting powers to another agency that Congress did not enjoy itself, he declared, would be the height of irresponsibility. The Bureau, he argued, had a history of violating civil liberties and had never been held accountable.<sup>129</sup> Other witnesses supported Connolly’s thoughts. Just as it had in 1940, the House Judiciary Committee again reported favorably on the resolution, but once again Congress took no action upon it. Because Congress refused to enact any legislation legalizing wiretapping, Roosevelt acted independently. His secret directive empowered the Bureau to wiretap ostensibly to protect the nation’s security. Without strict executive or congressional oversight, Bureau officials could use the technique for political surveillance. The presidency had overtaken Congress as the body that crafted the Bureau’s policies. For Congress, this loss of power proved difficult to overcome.

During the years 1924 to 1941, members of Congress in effect ceded some of Congress’s power to the executive branch. Members of Congress investigated the scandals of 1920 and 1924 thoroughly, but they never passed legislation restricting the Bureau of Investigation’s powers or creating mechanisms for proper legislative oversight. In the wake of Attorney General Harry Daugherty’s corruption, the Department of Justice was reorganized under Harlan Stone. Stone professionalized the Bureau, removed

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<sup>128</sup> Ibid., 114.

<sup>129</sup> Ibid., 114, 126-127.

political appointees, and demanded only the investigation of federal crimes. Hiring J. Edgar Hoover as director, Stone truly did reform the Bureau. These publicized administrative reforms allowed members of Congress to believe their oversight had been effective. Their investigations into Daugherty's abuses had led to his forced resignation, and Stone seemed to promise greater control over the Bureau. Stone's professionalization of Bureau operations did lead to great advances in scientific crime detection. The use of fingerprints and the creation of a forensic laboratory enabled Bureau officials to point to their importance during appropriations testimony. Statistics confirmed the Bureau's efficiency, offering members of Congress the facts necessary to justify a growing budget.

As the United States entered the Great Depression, a new president changed the relationship between the executive and legislative branches. To combat the economic crisis, Franklin Roosevelt convinced Congress to approve a variety of large programs, centered in the executive branch. Overcoming states' rights objections, Roosevelt increased the power of the federal government, in the process softening public resistance to a larger federal law enforcement role. In response to a perceived crime wave that affected many Americans from 1933 to 1935, Attorney General Homer Cummings pushed a 12-Point Crime Program. By passing legislation that increased the FBI's role in law enforcement, Congress had set the stage for an expanded Bureau. With these new responsibilities came requests for larger and larger appropriations. When members of Congress, including Senators Kenneth McKellar and George Norris, objected to this expansion, the Bureau targeted them. Members of the Bureau painted these men as part of a plot to smear Hoover and looked to tie them to radicals. Any attempts by these members of Congress to investigate the Bureau backfired and the potential for abuses

remained. With the evolution of the Bureau as a more powerful agency, the same abuses that garnered intense Congressional scrutiny at the beginning of the decade went unchecked at its end.

As World War II came to a head in Europe, President Roosevelt continued to expand the powers of the executive branch. Because of the potential threats of saboteurs, Roosevelt issued secret directives, without Congressional knowledge, allowing the FBI to investigate those deemed dangerous to national security. Unaware of these directives, members of Congress could not effectively oversee the Bureau's actions. Ironically, their desire for secrecy led executive branch officials to refuse to exercise needed oversight. An examination of wire tapping as a case study underscores the inability of Congress to enact meaningful legislation and thereby permit a determined president to act independently. The Department of Justice never stopped pushing for new wiretapping legislation, even after Roosevelt's secret directive. Congress could not act swiftly enough, in Roosevelt's opinion. Because the executive branch now dominated federal government, congressional power withered.

Once the United States became involved militarily in World War II, the discussion about the role of the Federal Bureau of Investigation changed dramatically. In the era after Pearl Harbor, members of Congress began to actively collaborate with Bureau officials. Exploiting the national security concerns inherent to the Cold War, influential congressmen and senators soon turned to Bureau officials to advance their political careers. Bureau officials were more than happy to oblige, so long as such collaboration was on their terms. If members of Congress challenged those terms, dire consequences followed.

## **Chapter 4**

### **New Congressional Relationships: 1941-1956**

Just as during World War I, FBI officials saw the Bureau's powers, appropriations, and duties expand with America's entry into World War II. With the lessons they learned from the past, however, the Bureau's leaders did not squander this opportunity to see that the Bureau remained at the forefront of American political life. Instead of getting mired in controversy, as had first been the case with the Palmer Raids and then the scandals of the Harding administration, Bureau officials more effectively courted the allies they needed to maintain the FBI's expanded role. One of their most effective methods was to offer Bureau investigative services. These were offered at times openly but at other times covertly, often without the knowledge of attorneys general, presidents, and key Congressional committees. The leadership and staff of these congressional committees, in contrast to presidents and attorneys general, often shared the conservative ideology of senior FBI bureaucrats about the necessity to protect America from a perceived fascist (and then communist) threat, although for quite different reasons. While many Bureau officials were sincerely committed to protecting the nation from a perceived serious internal security threat, their informal allies in the House and the Senate were motivated to exploit the growing Cold War as a path to increased political prominence. In that sense, Bureau officials and their witting congressional allies could benefit from a shared knowledge and aid. This often-secret association defined senior FBI officials' relationship with Congress that began in the mid-1940s. Both groups benefitted from this covert alliance, with the FBI increase in power owing to the willingness of kindred congressmen and senators to increase FBI

appropriations and, in turn, vault into national political prominence through the invaluable assistance of the Bureau's leadership.

As the 1950s dawned, however, the relationship of senior FBI officials with several of their congressional allies began to sour. The deterioration was the inevitable byproduct of the Bureau's assistance, predicated upon assurances of total secrecy. Hoover strictly enforced this rule. If a member of the House or Senate violated this condition and revealed that the FBI had been the origin of their sources, the wily FBI director terminated the relationship and curtailed any future assistance. Ironically, a key factor in the downfall of Senator Joseph McCarthy stemmed from the Bureau leader's decision to cease leaking invaluable political intelligence to him. This era was thus marked by Hoover's ability to control his Bureau's dealings with Congress.

One of the most important relationships built by Bureau officials during World War II was with the subcommittee of the House Appropriations Committee that dealt with the Department of Justice's appropriations. Even before the war began, Hoover realized the importance this committee played in crafting his budget. As early as 1936, Hoover made sure to offer as much publicity to this committee as possible, even having six newspapers present when members of the House Appropriations Committee were to be fingerprinted in Hoover's office.<sup>1</sup> Hoover also ensured members of this subcommittee received "material pertaining to the work of the Bureau from time to time."<sup>2</sup> Even more important, Bureau officials kept Hoover updated on the changing make-up of the subcommittee, passing along information about new members or new chairmen.<sup>3</sup> Whenever these congressmen visited Bureau facilities, they were treated with "every

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<sup>1</sup> Memo for the Director from Tolson, 12 February 1936, FBI# 62-40772-2.

<sup>2</sup> Memo for Mr. Edwards, Mr. Hardo, Mr. Joseph from Hoover, 12 February 1936, FBI# 62-40772-3.

<sup>3</sup> For example, Memo for the Director from Tolson, 13 November 1939, FBI# 62-40772-52.

courtesy” because their questions often dealt directly with future Bureau funding. The Los Angeles field office even found time to take congressmen “for a tour of the various studios by Special Agents...who were assigned to that duty.”<sup>4</sup> Hoover knew the importance of this House committee and provided every piece of assistance he could. By 1943, that assistance grew to include the use of FBI agents to help staff an investigatory office within the Appropriations Committee.

In early January 1943, the Chairman of the House Appropriations Committee, Clarence Cannon, approached FBI Director Hoover to seek his approval for the committee’s use of Bureau agents to “do investigative work for the Appropriations Committee.” Cannon had decided to approach Hoover because the Committee had decided “it was necessary to establish some sort of check and investigation of requests for appropriations” and “it had been determined to ask the Federal Bureau of Investigation to effect arrangements whereby Special Agents of the Bureau might be made available to the House Appropriations Committee to make such checks.”<sup>5</sup> Attorney General Biddle told President Roosevelt that he opposed the plan because “it would put the Department of Justice in the impossible position of investigating other Departments, including the Army and Navy, and passing on their needs.” Instead, Biddle had “no objection to ‘lending’ one Agent to the Committee to help it set up such an organization.” Roosevelt responded that Biddle was “absolutely right.”<sup>6</sup> After discussing the FBI’s potential relationship with the Attorney General, Hoover told Chairman Cannon that “the Attorney General is not in favor of the Chairman’s request, but the Bureau would be able to release

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<sup>4</sup> Memo for the Director from A. Rosen, 11 December 1940, FBI# 62-40772-57.

<sup>5</sup> Memo for the Attorney General from Hoover, 2 January 1943, FBI# 62-40772-62X1.

<sup>6</sup> Memo for the President from Francis Biddle, 4 January 1943, Box 2 Folder 6: FBI, Francis Biddle Papers, 1912-1967, FDR Library.

two men to organize the Appropriation Committee's investigation unit.”<sup>7</sup> To heed Biddle's desire while also putting his agents into this influential position, Hoover decided to “place Assistant Director Hugh H. Clegg on leave without pay for three months and Mr. R.H. Laughlin, Chief Clerk of the Bureau, on leave without pay for an indefinite period.” These men were two of Hoover's “best men and they would be able to do full justice to the important task of organizing such a unit for the House Appropriations Committee.”<sup>8</sup> The framework for this agreement became reality in February 1943, with Assistant Director Clegg informing Hoover about his new position of influence within the House Appropriations Committee. Eventually, the relationship was formalized and a system created in which “the Agents would be rotated after three years; that one gradually moves up to be in charge of the investigators the third year and then returns to the Bureau after three years.”<sup>9</sup> This procedure continued throughout the House Appropriations Committee's relationship with Bureau agents.

On 24 February 1943, Clegg briefed Hoover on the new investigatory procedures and staff within the House Appropriations Committee. Clegg informed Hoover FBI investigations would be initiated following a written request from the chairman and ranking minority member of the committee, or from a majority of the full committee. As part of the deliberations in the setting up of the investigatory body, it was agreed that the investigators would come “from the classified Civil Service...in addition to Mr. Laughlin and myself.”<sup>10</sup> Clegg and Laughlin would serve for three months, with Laughlin acting as

<sup>7</sup> Memo for Mr. Tolson, Mr. Tamm, Mr. H.H. Clegg from Hoover, 7 January 1943, FBI # 62-40772-62X2.

<sup>8</sup> Ibid.

<sup>9</sup> Memo from Hoover to Tolson, Mohr, Callahan, DeLoach, 29 March 1965, FBI File# 67-9524 (Section 7 Folder 5), Memorandum from J. Edgar Hoover, 14 January-24 August 1965, Clyde Tolson File, Marquette University Archives.

<sup>10</sup> Memo for the Director from H.H. Clegg, 24 February 1943, FBI# 62-40772-63.

“Number One Man.”<sup>11</sup> As for publicity, Clegg agreed with Congressman Cannon that “there should be no publicity” at the beginning of their meeting. In the end, however, Cannon issued a press release announcing the formation of the investigatory group, with Clegg in charge “not because the FBI was a crime detection agency, but because of [his experience] in training, organization, and inspection work.”<sup>12</sup> By March, Clegg and Laughlin were working for the House Appropriations Committee with Clegg often sending blind memoranda to Hoover reporting on the subjects of his investigations. For example, in March 1943, Clegg reported the House Appropriations Committee investigated several “ranking officials...of the Agricultural Adjustment Agency for...the use of Federal funds for personal services or communications for the purposes of influencing or attempting to influence a member of Congress with reference to any legislation. This should prove quite interesting.”<sup>13</sup> For the rest of the spring and into early summer, Clegg organized the House Appropriations Committee’s investigations, garnering praise from Congressman Cannon, who became more reluctant to let Clegg return to the Bureau after the agreed-upon three months.

Clegg continued to brief Hoover after returning to his position with the Bureau. Clegg wrote that Cannon was “discouraged at the news that I felt I should return to the FBI as he wanted to keep me with the investigating staff here.”<sup>14</sup> Cannon was so impressed with Clegg’s work that he planned to “make a speech on the floor of the House” about the investigatory staff’s accomplishments, including that he had heard no

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<sup>11</sup> Memo for the Director from H.H. Clegg, 24 February 1943, FBI# 62-40772-63.

<sup>12</sup> Ibid.

<sup>13</sup> Memo for the Director from H.H. Clegg, 30 March 1943, Hugh H. Clegg Folder, Nichols OC Files.

<sup>14</sup> Ibid.

complaints about the work that was performed.<sup>15</sup> Congressman Cannon even wrote to Hoover, commending Clegg's work and the staff's ability to overcome "every 'Doubting Thomas.'" Cannon concluded by expressing his appreciation and hoped "it will be possible for [the Bureau] to continue to cooperate" with his committee.<sup>16</sup> In response, Hoover assured Cannon that "it has been a pleasure to cooperate with your committee and that you may continue to call upon us for assistance in any matter in which we may be of aid to you and your associates."<sup>17</sup> Although Clegg returned to his duties at the Bureau, Laughlin continued to aid the House Appropriations Committee and keep Hoover informed about its actions.

Some of Laughlin's most important messages described upcoming investigations of the Department of Justice initiated by the House Appropriations Committee. Before the Committee's investigators reached the Bureau, Laughlin was careful to send word to Hoover. One such instance in January 1944 involved an investigation into the "controls set up on long distance telephone calls, telegrams, and cables, travel, and penalty mail in the Department of Justice." Assistant Director W.R. Glavin told Hoover that he reminded Laughlin to "suggest...when they call at the Bureau that they speak to either Mr. Tolson or myself." In any regard, according to Glavin, "we will not have any difficulty at all concerning these matters since the Director has set up an excellent control of such expenditures."<sup>18</sup> With advance warning, the Bureau's leadership could ensure their compliance with regulations, assuring them a spotless record when requesting increased funding from the Appropriations Committee. This advance intelligence in effect ensured

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<sup>15</sup> Memo for the Director from H.H. Clegg, 25 July 1943, Hugh H. Clegg Folder, Nichols OC Files.

<sup>16</sup> Chairman Clarence Cannon to Hoover, 25 July 1943, FBI# 62-40772-68.

<sup>17</sup> Hoover to Chairman Clarence Cannon, 30 July 1943, FBI# 62-40772-68.

<sup>18</sup> Memo to Hoover from W.R. Glavin, 5 January 1944, FBI# 62-40772-91.

that FBI officials could be confident that they could neutralize any potentially adversarial relationship with this critical group of congressmen.

Hoover realized the importance of this position of influence with the Committee that determined his Bureau's budget. At times, he ordered agents to go out of their way to assist committee members and staff. One such example occurred in 1951 when the chief Bureau agent working for the House Committee told his superiors that the clerk of the committee would be visiting Chicago. FBI officials immediately instructed the Chicago office to "make the appropriate hotel reservations" for the clerk's wife and for "the necessary courtesies" to be shown to her.<sup>19</sup> Hoover even helped Cannon find hotel rooms, and at a premium, for the Congressman's guests attending a postal convention over a weekend in Washington. Within two days, agents of the FBI Washington field office made reservations at the Hotel Statler for Cannon's guests.<sup>20</sup>

Another of Hoover's methods to keep on solid terms with the House Appropriations Committee involved sending letters of praise to its members on the occasions of their retirements, birthdays or anniversaries. And, because he knew inside information about the Committee's plans, Hoover was always one of the first bureaucrats to learn about possible changes on the Committee. Thus, when Congressmen James Scanlon retired in November 1945, Hoover wrote him that he had "been informed that on November 30<sup>th</sup> you plan to follow the tradition of thoroughbreds in Kentucky by retiring on that date. Needless to say, your leaving will be a much felt loss not only to the Committee you have so ably served during your years of service, but also by the many friends you have made. I do not want to let the occasion pass without extending to you

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<sup>19</sup> Memo to Mr. Tolson from W.R. Glavin, 10 October 1951, FBI# 62-40772-166.

<sup>20</sup> Memo to Tolson from W.R. Glavin, 15 September 1951, FBI# 62-40772-NR; Memo to Mr. Tolson from W.R. Glavin, 17 September 1951, FBI# 62-40772-162.

my heartfelt wishes for your well-being and happiness during the years I know you will enjoy as a gentleman of leisure.”<sup>21</sup> Congressmen were not the only recipients of such praise. On the occasion of his retirement, House Appropriations Committee Clerk Marcellus Sheild received a letter from Hoover “those of us in the Bureau, who have considered you our friend during the past years, will lose one of most loyal friends on the Appropriations Committee. I am sorry to see you go. You take with you the sincerest wishes of all of us in the Bureau. You have well earned a respite from your arduous duties, and I do hope that through the years you will receive the reward you so richly deserve.”<sup>22</sup> Members of Congress reciprocated with such pleasantries, as on the occasions of Hoover’s anniversaries with the Bureau. As Cannon wrote to Hoover in 1959, he “noted [Hoover was] reaching his 35<sup>th</sup> anniversary as director of the FBI and hasten to write to offer warmest felicitations. You are just reaching your prime. Don’t grow weary of well-doing and get this retirement bug. You are too valuable a man to the nation to be allowed to follow your own preferences in such matters.”<sup>23</sup> In fact, Cannon’s last Washington event prior to his death was a White House celebration of Hoover’s fortieth anniversary as director of the FBI.<sup>24</sup>

Hoover most often praised the chairmen of the House Appropriations Committee and the chairmen of the subcommittee that dealt specifically with the appropriations for the Department of Justice. In this capacity, the two congressmen Hoover dealt with most frequently were Clarence Cannon and John J. Rooney, Democrats from Missouri and

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<sup>21</sup> Hoover to James F. Scanlon, 28 November 1945, FBI# 62-40772-103.

<sup>22</sup> Hoover to Marcellus C. Sheild, 1 December 1944, FBI# 62-40772-89.

<sup>23</sup> Cannon to Hoover, 18 May 1959, Folder 1296 (Federal Bureau of Investigation), Clarence Cannon Papers, Western Historical Manuscripts Collection, University of Missouri-Columbia. Hereafter, Clarence Cannon Papers.

<sup>24</sup> Memo, 8 May 1964, Folder 3112 (White House), Clarence Cannon Papers.

New York, respectively. Cannon was the long-time chair of the entire committee when Democrats led Congress. When Republicans controlled the Eightieth and Eighty-Second Congresses, the Appropriations Committee was chaired by John Taber, also of New York. Rooney, meanwhile, chaired the subcommittee on appropriations for the departments of State, Justice, the Judiciary and related agencies for most of the post-war period.

Rooney and Hoover corresponded extensively over many years, often about the FBI Director's appreciation of Rooney's help with appropriations matters. As an example, Hoover wrote to Rooney that he was "grateful...for your diligent efforts in securing the funds so necessary for carrying on the obligations and responsibilities of the Federal Bureau of Investigation."<sup>25</sup> Hoover also recognized Rooney for his "staunch support of this Bureau in the action you spearheaded during the meeting of the conferees of the House and Senate Appropriations Committee in restoring the \$150,000 to our appropriation...which had been cut by the Senate."<sup>26</sup> By the 1960s, a proud Rooney wrote a constituent worried about increased appropriations for the Bureau that "this is the tenth consecutive year that not one penny of the funds requested of the Committee by the Director of the FBI has been denied."<sup>27</sup> Rooney even kept critical newspaper articles suggesting he was not harsh enough with the Director. As one *Washington Post* article commented, "Like most of the great men of Washington, Rooney reacts to The Director with both schoolboy awe and political wariness. 'I have never cut his budget and I never

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<sup>25</sup> Hoover to Rooney, 13 July 1949, 81 Cong. 1949-1950—Organizations-Appropriations Committee (Box 81), John J. Rooney Collection, Brooklyn College Special Collections, Brooklyn College Library. Hereafter, John J. Rooney Collection.

<sup>26</sup> Hoover to Rooney, 29 May 1957, 84 Cong.—Non-Residents, Hoover, Hon. J. Edgar-FBI (Box 175), John J. Rooney Collection.

<sup>27</sup> Rooney to Vern Oldham, 31 May 1961, 87 Cong.—Justice Department (Box 304), John J. Rooney Collection.

expect to,’ the 13-term Congressman explained a few weeks ago.’ The only man who ever cut it was Karl Stefan, a Republican from Nebraska who had this job before me. When Stefan went home for election that year, they nearly beat him because he took away some of Hoover’s money.”<sup>28</sup> Even after annually thanking Rooney for his aid with Bureau appropriations, Hoover also made sure to extend every possible courtesy to the congressman.

The FBI Director used every outlet at his disposal to aid Rooney. When Rooney’s son visited the Bureau, he was given a special tour.<sup>29</sup> Hoover also invited Rooney to a special screening of a Hollywood film made “with the cooperation of the FBI” following a buffet supper.<sup>30</sup> Perhaps the biggest plum Hoover could offer was the chance to address the graduates of the FBI National Academy, something Rooney did in 1950. After the speech was reprinted in the FBI Law Enforcement Bulletin, Hoover made sure the congressman received a copy.<sup>31</sup> There were even rumors that Hoover helped Rooney win reelection in order to keep him in charge of the Bureau’s budget. Both Rooney and Bureau spokesmen denied these allegations, but it certainly seems plausible that Rooney received information about his opponents from the Bureau.<sup>32</sup>

While his correspondence with Taber was less prolific, Hoover did all he could to assist the congressman while he controlled the appropriations to the Bureau. This aid began before Taber was elevated to the chair and served as ranking minority member.

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<sup>28</sup> Richard Harwood, *Washington Post* 24 February 1968. Found in 90 Cong.—Organizations—FBI (Box 410), John J. Rooney Collection.

<sup>29</sup> Rooney to Hoover, 9 February 1945, Non-Residents 1945-47, 79 Cong. HOM-HOW (Box 23), John J. Rooney Collection.

<sup>30</sup> Hoover to Rooney, 12 September 1945, Non-Resident 1945-47, 79 Cong. HOM-HOW (Box 23), John J. Rooney Collection.

<sup>31</sup> Rooney to Hoover, 5 June 1950, 80 Cong.—Non-Residents HOM-HR (Box 47), John J. Rooney Collection.

<sup>32</sup> John J. Crewdson, *Charlotte Observer* 25 February 1974. Found in Box 587, John J. Rooney Collection.

Taber once asked Hoover to investigate the activities of “three Negro brothers” from Taber’s district who were said to be “promoting a movement among white people called Youth for Christ. It is supposed, by the neighbors, to be a racket and a swindle.” Hoover responded that the information held in Bureau files indicated their activities did not violate federal statutes. His report continued, however, by laying out the activities of these brothers and the suspicion raised by their “three large cars” and financial success.<sup>33</sup> Taber also responded to his constituents’ queries to retain Hoover as director to the Bureau. When one citizen wrote in support of Hoover, Taber responded that “Hoover had done a magnificent job, and I assure you that I shall do everything I can against any possible movement to oust him.”<sup>34</sup>

Not all congressmen supported Hoover and his Bureau. Whenever these congressmen became members of the House Appropriations Committee, Laughlin advised Hoover and memos were written detailing any past difficulties. In December 1947, Hoover was informed that “Representative Cliff Clevenger, Republican, of Bryan, Ohio, has been designated as the other member of our Appropriations Committee.” In the margins, Hoover noted “doesn’t look promising” while Tolson assured Hoover “files being checked.”<sup>35</sup> A memo was created in response, detailing Clevenger’s positions regarding the Bureau. In one section titled “Veiled Attack Against the Bureau,” FBI agents reviewed an editorial written by Clevenger in 1939 for anti-Bureau language. The editorial, according to the Bureau analyst said “European dictatorships had been able to rise on the misuse of police power and that a similar influence is now being seen in

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<sup>33</sup> Taber to Tolson, 19 October 1948; Hoover to Taber, 25 October 1948, Justice Department, 1948 (Box 90), John Taber Papers, Rare and Manuscript Collections, Cornell University Library. Hererafter, John Taber Papers.

<sup>34</sup> Taber to Mrs. Ray Gambell, 10 February 1950, Justice Department, 1950 (Box 158), John Taber Papers.

<sup>35</sup> Memo to Mr. Tolson from W.R. Glavin, 2 December 1947, FBI# 62-40772-115.

American police circles. He said that it was a swift move from the 'so-called American Scotland yard to an American Gestapo.'"<sup>36</sup> To Bureau officials, who relished being compared to England's Scotland Yard, this was a troubling sign of hostility from a new member of the committee responsible for determining FBI appropriations. As possible leverage against Clevenger, the memo stated that the Bureau possessed information that "Clevenger was on a special list and on one occasion an informant addressed an envelope to Clevenger and others for the purpose of sending out propaganda" to further the Nazi cause during the war. Clevenger had also been listed in a pamphlet as someone who "had helped the Nazis by aiding George Sylvester Viereck, the convicted Nazi agent."<sup>37</sup> Should Clevenger cause problems for Bureau appropriations, this information could be exploited to undermine his position and overcome any obstacle he might present.

In a long memo to Hoover in January 1944, Laughlin recounted the actions of the investigatory staff and the ways the committee used the acquired information. In this memo, Laughlin suggested that Bureau agents should only be used to complete the investigations, instead of the current procedure in which investigators from other agencies such as the Treasury Department were used. According to Laughlin, "six good Agents could have accomplished as much, if not more and certainly more efficiently, than has been done under the present plan. If you should desire to follow this procedure, I will further suggest that Agents can be assigned to this staff and serve for six months to a year and replacements made in such a manner as to always retain on the staff, a majority of Agents who had the benefit of several months' experience on this type of work."<sup>38</sup>

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<sup>36</sup> Memo to Mr. Nichols from M.A. Jones, Subject: Congressman Cliff Clevenger, Republican of Bryan, Ohio, 2 December 1947, FBI# 62-40772-114.

<sup>37</sup> Ibid.

<sup>38</sup> Memo for the Director from Robert H. Laughlin, 20 January 1944, FBI# 62-40772-81.

Laughlin cited another benefit beyond efficiency: “By utilizing exclusively the service of Agents,” he advised Hoover, “all the information developed would be confined to the Bureau.”<sup>39</sup> Hoover and FBI Associate Director Tolson opposed this suggestion, noting, “I doubt the wisdom of the FBI taking over the entire work,” although adding that complete Bureau control would be “better for FBI to do than some other agency in Govt Executive Depts.”<sup>40</sup> Establishing Bureau agents as the leaders of this investigatory body could ensure that Hoover would be informed on its activities and use that information to increase the FBI’s budget and authority as those of other agencies declined.

As this relationship between the Bureau and the Appropriations Committee progressed, Chairman Cannon requested that more agents be assigned to his committee. Relaying this request to Hoover, FBI officials reported that Cannon “always felt that there are no better trained or more capable investigators in the Government service than are found in the FBI.”<sup>41</sup> Over time, Cannon sought more Bureau agents. Knowing the “tremendous workload now imposed on the Bureau,” Cannon suggested adding agents to his committee staff “up to a predetermined maximum total man years.”<sup>42</sup> By May 1952, in fact, Cannon requested that Hoover “loan agents on a reimbursable basis to the equivalent of 17 man-years of agents’ time annually” in addition to the 3 Bureau agents already on the Committee’s payroll. These agents, Cannon argued, made “the most effective investigations.”<sup>43</sup> Hoover was “very happy to make available the personnel requested by you within the limit set forth.”<sup>44</sup> With three agents permanently employed

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<sup>39</sup> Ibid.

<sup>40</sup> Marginal notations, Ibid.

<sup>41</sup> Memo to Mr. Clegg from F.D. Vechery, 5 April 1952, FBI# 62-40772-178.

<sup>42</sup> Ibid.

<sup>43</sup> Cannon to Hoover, 23 May 1952, FBI# 62-40772-188.

<sup>44</sup> Hoover to Cannon, 6 June 1952, FBI# 62-40772-187.

on the committee's investigatory staff, and most of the major investigations conducted by agents lent for the purpose, Bureau officials ensured their appropriations remained intact, even in cases where this required lowering the budgets of other departments. This connection to the Appropriations Committee proved so valuable to the Bureau's administration that it became a model for the FBI's relationships to other committees, even, in one case, to potential rivals.

One of the earliest threats to the Bureau's dominance in publicizing communist infiltration into government and other areas of American life was the Dies Committee, later renamed the House Un-American Activities Committee. Created in 1938, this committee was initially a temporary committee. From the beginning, Hoover viewed its hearings and overtly partisan efforts at publicity with suspicion, telling Attorney General Cummings that he anticipated "requests from members of Congress for the assignment of Special Agents of the Federal Bureau of Investigation to assist those committees in their fact-finding inquiries.... At this time, of course, the work of the Bureau is hopelessly delinquent due to the extraordinary demands which have been made on the Bureau's personnel...and it will be obviously impossible...to devote any of [the Bureau's] time to the conducting of inquiries."<sup>45</sup> When Congressman Martin Dies in fact asked the Bureau for "such number of legal and expert assistants and investigators necessary as said committee may from time to time deem necessary," Hoover told Attorney General Cummings that "as a matter of general policy, to accede to the request would be objectionable."<sup>46</sup> President Roosevelt also rejected Congressman Dies's request to

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<sup>45</sup> Memo from Hoover to Attorney General, 11 June 1938, FBI# 61-7582-2, FBI Series 3: House Un-American Activities Committee, Marquette University Archives. Hereafter, HUAC Files.

<sup>46</sup> Martin Dies to Hoover, 17 June 1938, FBI File# 61-7582-3; Memo from Hoover to Attorney General, 21 June 1938, FBI# 62-7582-3, HUAC Files.

instruct the Department of Justice to assign agents to his committee.<sup>47</sup> Even as investigators for the committee asked for the Bureau's help, the Director refused to get involved, even cautioning one Pennsylvania agent not to attend a luncheon discussion led by Congressman Dies. His presence could have led to "misinterpretation of his motives" and might have subjected the Bureau to embarrassment.<sup>48</sup>

Congressman Dies requested the Department of Justice's assistance on a regular basis. In December 1940, Jerry Voorhis, another member of the Dies Committee, solicited Attorney General Robert Jackson's assistance in creating a "mutually beneficial and satisfactory basis of cooperation between the Department of Justice and the Committee in our common endeavor to protect this nation from forces, organizations, and persons within our borders who seek to promote the interests of foreign powers or dictators."<sup>49</sup> While the Department of Justice enforced laws, Voorhis argued, the Committee's duty was to make "recommendations to Congress" and inform the American people about "the activities and propaganda of organizations and groups in the United States which seek to promote here the totalitarian cause."<sup>50</sup> Voorhis further proposed a policy that Hoover did find useful in the future. Because the Department of Justice's authority was limited to prosecuting federal crimes, Voorhis observed, the Committee could expose "matters concerning such organizations and groups which may not be violations of our laws but which are nevertheless clearly inimical to the cause of the preservation of our Constitutional Democracy." Accordingly, he proposed that the Department of Justice furnish the Committee "such information as the Department may

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<sup>47</sup> Franklin D. Roosevelt to Martin Dies, 9 October 1940, Official File 320: Dies Committee, FDR Library.

<sup>48</sup> Memo from E.A. Tamm to Hoover, 30 January 1939, FBI # 61-7582-52, HUAC Files.

<sup>49</sup> Letter from Jerry Voorhis to Attorney General Robert Jackson, 10 December 1940, Hoover OC Files.

<sup>50</sup> Ibid.

from time to time obtain which bears upon matters which do not afford a basis for prosecution or action by the Department under present law but which could and should properly be given to the American people if they are to be on guard against technically legal as well as illegal efforts of the agents of totalitarianism to weaken and undermine our democracy.”<sup>51</sup> In response, Attorney General Jackson agreed “to comply with your request” as long as prosecution was not possible.<sup>52</sup> Jackson clearly stated that information would be given to Voorhis and Congressmen Dempsey and Starnes without mentioning Chairman Dies.<sup>53</sup> Clearly, the Department of Justice and Hoover in particular distrusted Dies.

Bureau leaders distrusted Martin Dies because they viewed him as “temperamental” and often working at cross-purposes with their aims.<sup>54</sup> Furthermore, at the time, they were reluctant to “support his all-out assault on the New Deal’s programs, personnel, and constituency.” Nonetheless, the Bureau intermittently furnished his Committee carefully selected information from FBI files—thereby setting a precedent for the more formal relationship that evolved between the Bureau and the Dies Committee’s successor.<sup>55</sup> Instead of drafting legislation to aid the Bureau’s efforts at stopping the subversive threats facing the nation, Dies “viewed himself primarily as an educator, with the weighty responsibility of alerting the American public to the dangers of joining subversive organizations.”<sup>56</sup> To achieve that educational objective, the Dies Committee hearings focused instead on accusing organizations, hoping to gather evidence once the

<sup>51</sup> Letter from Jerry Voorhis to Attorney General Robert Jackson, 10 December 1940, Hoover OC Files.

<sup>52</sup> Ibid.

<sup>53</sup> Letter from Attorney General Robert Jackson to Congressman Jerry Voorhis, 10 December 1940, Hoover OC Files.

<sup>54</sup> O'Reilly, 37.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid., 41.

threat was revealed. Hoover, on more than one occasion, requested that the attorney general insist that the Committee provided proof to support its accusations, because otherwise the Committee's actions could ruin the Bureau's reputation. In an October 1940 memo, Hoover protested to the attorney general that "the FBI has received not one single piece of evidence from the State Department or from the Dies Committee upon [the activities of German consuls] and consequently, this Bureau cannot conduct any investigation into this situation until the material is received by it." Dies, Hoover counseled, should "put up or shut up." The FBI Director instead urged the attorney general to convene a grand jury in Washington, D.C., to hear Dies's evidence. That way, Dies could not continue to claim "the Executive branches...are sympathetic with subversive elements and prone to delay and procrastinate."<sup>57</sup> Hoover once again asked the Attorney General, in November 1940, to call Dies before a grand jury, this time after Dies had accused the Department of Justice of having covered up its "failure in detecting sabotage" after several powder plant explosions. This way, according to Hoover, "if there is any basis for investigative or prosecutive action on the part of the Department it may be taken clearly, promptly and in a decisive manner. On the other hand, if Mr. Dies is fabricating the material which appears in his press pronouncements, I believe the Department has a public obligation to bring forth the facts in a dignified manner."<sup>58</sup> While Hoover did not believe Dies held the evidence he claimed, Bureau officials nonetheless closely monitored Dies and his committee. In Hoover's opinion, Dies was "a rank amateur" who did not deserve the FBI's support, despite Attorney General Jackson's earlier agreement with Congressman Voorhis. This potential imbroglio apparently ended

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<sup>57</sup> Memo from Hoover to Attorney General, 21 October 1940, Hoover OC Files.

<sup>58</sup> Memo from Hoover to Attorney General, 16 November 1940, Hoover OC Files.

in December 1944, when the Dies Committee quietly expired, months after Dies decided not to run for reelection.<sup>59</sup> The committee, however, was resurrected by Congressman John Rankin at the beginning of the next Congress. With the formal end of World War II, Hoover reassessed his earlier standoff policy, having recognized the importance of educating the public on the Red Menace. The FBI Director was now willing to forge a more formal relationship with the House Un-American Activities Committee, having concluded that the Committee could prove useful in advancing his own anti-communist goals, the more so because Dies himself left Congress in 1945 and the committee was in more trustworthy hands.

Senior FBI officials decided “to provide covert support to HUAC and the various anticommunist interest groups that coalesced around it.... Going far beyond mere containment or surveillance of Communists and their alleged liberal benefactors, [D. Milton] Ladd [head of the Bureau’s Crime Records Division, which produced the Bureau’s publicity materials] called for a domestic propaganda campaign to dramatize the seriousness of the threat posed to America’s internal security by CPUSA radicals and those indigenous dissidents who defended their constitutional rights.” The Bureau, according to Ladd, “could and should mobilize its public relations machinery for the purpose of nurturing an anticommunist consensus” and the House Un-American Activities Committee offered the perfect vehicle.<sup>60</sup> In fact, this committee became the perfect “forum for laundering information that the FBI could not use for prosecutive purposes, either because there was no violation of law or because the information was

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<sup>59</sup> O'Reilly, 72.

<sup>60</sup> Ibid., 76.

illegally obtained.”<sup>61</sup> One key element in this new educational campaign was an increasingly public presence by the FBI Director, who became known as one of America’s experts on the threat of communism. In the midst of writing articles and appearing before various conventions (notably those of veterans’ groups), Hoover also agreed to publicly testify before HUAC in March 1947.

With the inauguration of the Eightieth Congress in January 1947 came a new chair of the House Un-American Activities Committee, J. Parnell Thomas, a diehard conservative Republican from New Jersey. Thomas decided to establish the committee’s standing as a preeminent red hunter, and in the process raise questions about the loyalty of New Dealers. One way to accomplish this was by inviting Hoover to appear before the committee and legitimate a politics of militant anti-communism. When Hoover asked if in his testimony he would comment on legislative issues (something Hoover was hesitant to do), Thomas described the true purpose of the hearing as “a full-dressed public denunciation of Communists” and that he wanted Hoover to “discuss the general subject of Communism and its menace.”<sup>62</sup> In a pre-hearing meeting with Thomas, Bureau official L.B. Nichols told the congressman that committee already had “voluminous testimony on this subject” and that Hoover could not testify about pending matters. Thomas replied, according to Nichols, that “the Director had issued statements to the press, had made speeches, had written articles, and that surely the Director could furnish the same or similar information to the Committee that is charged with the responsibility of investigating Communism in the United States.”<sup>63</sup> Nichols then pointed out to

<sup>61</sup> Theoharis and Cox, 215.

<sup>62</sup> Memo from L.B. Nichols to Mr. Tolson, 18 March 1947, FBI# 61-7582-1439, HUAC Files.

<sup>63</sup> Ibid.

Congressman Thomas the problem that Hoover would face if he testified publicly before the committee.

Bureau officials' biggest fear about appearing before HUAC was the inevitable questions. As Nichols told Thomas, "questions...undoubtedly would be asked which [Hoover] could not answer, that to answer them would do more harm than good and that undoubtedly the common enemies of the FBI and the Un-American Activities Committee would seize upon such instances in an effort to drive a wedge between the Committee and the Bureau." Thomas proposed a simple solution, however. If the chairman could not stop the question, Hoover could simply "say that he would prefer to answer that question in executive session, that of course there would probably never be an executive session and this would merely be a way out."<sup>64</sup> As Nichols stated later, "a general statement does not worry me too much; it is the questions."<sup>65</sup> Thomas denied Hoover those excuses by promising to exercise strict control over questions while offering an out should any questions make Hoover uncomfortable.

To patch up the long-term historical differences between the committee and the Bureau, Thomas blamed past difficulties on the Truman administration, claiming that its actions had kept the Director "under wraps for years" owing to their having "favored Communists." Rather than blame Hoover, Thomas focused on the Attorney General, whom, he claimed, had driven his patience to the end.<sup>66</sup> Any "professional jealousy" between the Committee and the Bureau, according to Thomas, had been caused by the Attorney General and the Administration. Instead of allowing this restriction to continue, Thomas urged Hoover to "set the record clear so far as [the Committee's] work was

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

concerned.”<sup>67</sup> In a calculated response, Nichols told Thomas that the Bureau was “still part of the executive branch” and was a “fact-finding agency.” Any decisions about what to do with those facts were made by higher officials and any attempt to curtail the Bureau’s effectiveness by “injecting [it] into any controversy [Thomas] had with the Bureau” would not be viewed kindly. Thomas replied that his only goal was to help the Bureau.<sup>68</sup>

Concluding his conversation, Thomas asked Nichols to check five names of suspected communists against the Bureau’s files. Instead of creating an official request, which would have to go through the Attorney General, Thomas requested that any information be given to him on a “personal and confidential” basis. Bypassing the Attorney General, and on assurance that the FBI’s assistance would remain private, Thomas effectively negated the objections of Bureau officials to sharing information with Congressional committees. Nichols urged the Bureau’s Associate Director, Clyde Tolson, that “we might very well furnish [Thomas] the information if it is proper on a personal and confidential basis.”<sup>69</sup> Hoover agreed to testify, but requested a change in the suggested date.<sup>70</sup>

In preparation for his congressional testimony, Hoover requested three top Bureau officials—Ladd, L.B. Nichols, and E.A. Tamm—to prepare data for his use. Submitting their response, Tamm assured Hoover that every effort had been made “to have available appropriate material for ready reference in anticipation of any possible questions which may be directed at you.” The report was arranged with the most

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid. The date had to be changed because it conflicted with graduation exercises of the FBI’s National Police Academy.

important material first, followed by secondary material.<sup>71</sup> Following a suggested opening statement, the director was provided information on the history and background of the Communist Party, information on the illegal nature of the Party and its advocacy of violent overthrow of the government, a survey on the various statutes relating to communist and subversive activities, suggested positions on legislative proposals, a summary of the Bureau's dealings with HUAC and, finally, suggestions on public actions against communism.<sup>72</sup> The secondary material reflected the Bureau's interests in communist propaganda activities, including radio, print, and film, followed by the Communist infiltration of labor and other groups.<sup>73</sup> Possessing this data, Hoover was well prepared to face the lights of the Committee hearing and hoped to be wading into friendly waters. His reception could not have been more cordial.

Hoover began his testimony on March 26 by clarifying the differences between the Bureau and the House committee. He pointed out that "the aims and responsibilities of [each] are the same—the protection of the internal security of this Nation. The methods whereby this goal may be accomplished differ, however." The committee's greatest contribution, Hoover posited, was the "public disclosure of the forces that menace America—Communist and Fascist. That is why the venom of the American Communist and the now defunct German-American Bund has been directed at this Committee as it has also been directed at the Federal Bureau of Investigation. This Committee renders a distinct service when it publicly reveals the diabolic machinations

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<sup>71</sup> Memo from E.A. Tamm to Hoover, 22 March 1947, FBI# 61-7582-1307, HUAC File.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

of sinister figures engaged in un-American activities.”<sup>74</sup> Hoover then described his Bureau as charged with investigating violations of federal laws as well as taking charge of all “espionage, sabotage, and subversive activities” investigations pursuant to President Roosevelt’s directive of September 6, 1939. In this capacity, the Bureau was “essentially an investigative agency.” “It is our duty,” Hoover emphasized, “to get the facts. We do not establish policies—that is the responsibility of a higher authority. We do not make decisions as to prosecutions—that is the responsibility of the Attorney General, his assistants and the various United States Attorneys.”<sup>75</sup> Having identified differences between the committee and the Bureau, Hoover then described the communist threat to the United States. The only antidote to this threat, he posited, was “vigorous, intelligent, old-fashioned Americanism with eternal vigilance.” The only defense was “a workable democracy that guarantees and preserves our cherished freedoms.”<sup>76</sup> After his testimony, he received a letter of congratulations from Congressman Thomas, who wrote that they could “both look forward to an era of cooperation between the Federal Bureau of Investigation and the Committee on Un-American Activities of the House of Representatives.”<sup>77</sup> That era of cooperation began immediately, as Bureau officials were now willing to support the committee’s actions in new ways.

Significantly, Bureau officials first began to aid the Committee covertly in 1947 when the Committee voted to investigate suspected communist infiltration into the motion picture industry. This decision marked a shift in the policies of senior FBI

<sup>74</sup> Statement of J. Edgar Hoover, Director, Federal Bureau of Investigation, Before the Committee on Un-American Activities, House of Representatives, 3:45 P.M., 26 March 1947, Washington, D.C., FBI# 61-7582-1442, HUAC Files.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> J. Parnell Thomas to Hoover, 28 March 1947, FBI# 61-7582-1449, HUAC Files.

officials toward HUAC. Instead of jealously guarding their files, Bureau officials enthusiastically shared them but under the strict condition that Committee members keep this assistance confidential. As Nichols advised Tolson in May 1947, the Committee did “not want any information the disclosure of which would in any way embarrass the Bureau, but [Congressman Thomas] felt there was background data to be furnished which would not hurt the Bureau but would further Mr. Hoover’s premise that the way to fight the Communist was to expose them.” Hoover agreed and ordered that the Bureau’s assistance be expedited, and specifically that the Special Agent in charge of the FBI’s Los Angeles office “extend *every* assistance to this Committee.” [emphasis in original]<sup>78</sup>

The change in Bureau officials’ attitude about aiding HUAC’s investigation into Hollywood was remarkable. As early as 1945, HUAC planned to investigate communism in the motion picture industry. At that time, the Director advised the Los Angeles field office “to be very careful to keep completely out of any investigation. The Committee is not, of course, to make use of our offices and, likewise, we are not to furnish them any information.”<sup>79</sup> By May 1947, as noted above, FBI officials had changed their mind and began making “available to the House Committee on Un-American Activities at Los Angeles memoranda” on several writers, producers, directors, and actors with suspected communist loyalties.<sup>80</sup> By June 1947, Congressman Thomas told the Director that “there had been much better relations between the Un-American Affairs Activities Committee and this Bureau than had previously existed.” Such cooperation, Thomas hoped, would

<sup>78</sup> L.B. Nichols to Mr. Tolson, 13 May 1947, FBI# 61-7592-NR, HUAC File. HUAC’s investigation into the motion picture industry is much more thoroughly documented in O'Reilly, 90-94 and Theoharis and Cox, 253-256.

<sup>79</sup> D.M. Ladd to E.A. Tamm, 3 July 1945, “Subject: Communist Infiltration in the Motion Picture Industry,” FBI# 100-138754-98, FBI Series 24: Communist Activity in Entertainment, Marquette University Archives. Hereafter, COMPIC Files.

<sup>80</sup> J.P. Coyne to D.M. Ladd, 11 July 1947, “Subject: Communist Infiltration in the Motion Picture Industry,” FBI# 100-138754-186, COMPIC Files.

continue. He especially desired "if entirely off the record and with absolute assurance that it would not pass beyond him as Chairman of the Committee, [Hoover] could arrange for leads and information of value to the Committee to be furnished to the Committee."

Thomas reassured the FBI Director that he understood FBI files were confidential and only hoped to continue to have contact to the Bureau through Assistant Director

Nichols.<sup>81</sup> After his meeting with Thomas, Hoover told senior FBI officials that he was "most desirous of being as helpful to this Committee as I can.... I do think it is long overdue for the Communist infiltration in Hollywood to be exposed and as there is no medium at the present time through which this Bureau can bring that about on its own motion I think is entirely proper and desirable that we assist the Committee of Congress that is intent on bringing to light the true facts in the situation."<sup>82</sup> Behind the scenes, the Bureau's Los Angeles field office had been working since May 1947 to compile a summary of information about this supposed infiltration, with the goal of informing headquarters what actions the Committee was taking.

In its report to Hoover, the Los Angeles office reminded the Director of his testimony before the Committee in March 1957, where he had told the members that "the Communist activity in Hollywood was effective and was furthered by Communists and Communist sympathizers who use the prestige of prominent persons in the motion picture colony to further their cause."<sup>83</sup> As the Committee prepared to hold its September 1947 hearings, Congressman Thomas asked Bureau officials if they could "unofficially get some background on a number of unfriendly witnesses." In response, Bureau officials

<sup>81</sup> Memo from Hoover to Mr. Tolson, Mr. Tamm, Mr. Ladd, Mr. Nichols, 24 June 1947, FBI# 100-138754-165, COMPIC Files.

<sup>82</sup> Ibid.

<sup>83</sup> D.M. Ladd to Director, "Subject: Communist Infiltration in the Motion Picture Industry—Internal Security (C) Running Memorandum," 24 May 1947, FBI# 100-138754-157X2, COMPIC Files.

provided “blind memoranda giving the background, association, Communist Party membership, etc.” to the Committee’s chief investigator.<sup>84</sup> While producing these blind memoranda would require taking agents off of their current jobs, Bureau officials were confident they could complete the enormous task before the Committee’s hearings began.<sup>85</sup> When he finally received the requested information, just days before the scheduled start to the hearings, Congressman Thomas asked that “his heartfelt appreciation be extended to the Director because the Director more than any other person is responsible for his Committee not being put out of business.”<sup>86</sup> This covert cooperation extended to other HUAC investigations involving attempts to expose communists throughout American society. Bureau officials could not effectively prosecute these suspected subversives, either because they had committed no federal crime or because the evidence against them had been gathered illegally. Instead, congressional committees like HUAC could educate the public about the menace.

Senior FBI officials collaborated with Committee counsel Robert Stripling and Committee members during HUAC’s highly publicized investigation into Whittaker Chambers’s allegations against Alger Hiss. Cognizant of the riskiness of this assistance (since it undermined the integrity of the Truman Administration, which kept promoting Hiss in government service), Hoover sought to allay the suspicions of the attorney general. Upon hearing a rumor about an attempted “understanding between the Department of Justice and the House Un-American Activities Committee,” that “problems [might] arise in the event the files of the Bureau were opened to a

<sup>84</sup> Memo from Nichols to Tolson, 21 August 1947, FBI# 100-138754-219, COMPIC Files.

<sup>85</sup> D.M. Ladd to Hoover, 3 September 1947, FBI# 100-138754-221, COMPIC Files.

<sup>86</sup> L.B. Nichols to Tolson, 28 October 1947, FBI# 100-138754-286, COMPIC Files. The blind memoranda were completed on 17 September 1947. See J.P. Coyne to D.M. Ladd, 17 September 1947, FBI# 100-138754-251X, COMPIC Files.

Congressional committee.... [O]ne of the basic problems that would always be present in an exchange of information with the Committee would be the security of that information.”<sup>87</sup> Just days earlier, however, a young member of the Committee, Richard Nixon, met with several FBI agents and, as recorded in FBI files, admitted having worked closely with Assistant Director Nichols over the last year on the Hiss matter.<sup>88</sup> FBI officials were willing to share information with the Committee, as long as Committee members honored Hoover’s requirement of confidentiality. Should the FBI’s covert assistance become known, this policy could open the Bureau to critical scrutiny. For the FBI Director, assisting the Committee in exposing Hiss’s communist affiliations trumped honoring his assurances to the attorney general about the need to retain the confidentiality of FBI files—and the embarrassing disclosure of FBI officials’ willingness to assist the Truman Administration’s Republican critics. By exposing Hiss through the Committee, Bureau officials could retain the FBI’s reputation as an apolitical fact-finding agency while insulating Hoover himself from the disclosure of his willingness to attack a respected New Dealer during the Democratic Truman administration.

FBI assistance to the House Un-American Activities Committee continued through the 1950s. A slight change occurred in 1955 when Congressman Francis Walter became chairman of the Committee. At that time, Walter complained to FBI officials over what he characterized as a “general decline of public interest in subversion.” He specifically solicited the FBI’s assistance in providing information on some situations

<sup>87</sup> Hoover to Attorney General, 20 December 1948, FBI# 61-7582-1553, HUAC Files.

<sup>88</sup> Theoharis comments on this meeting several times, including Theoharis and Cox, 252, and Athan Theoharis, *Spying on Americans: Political Surveillance from Hoover to the Huston Plan* (Philadelphia: Temple University Press, 1978), 164. See O'Reilly, 106-108. For further information on the Hiss case, see these sources.

that would serve to reignite anti-communist hysteria.<sup>89</sup> Walter's request led to a revised relationship with the Bureau, formalized in July 1956, creating "a comparatively smooth collaboration intended to further the cause" of anti-communism.<sup>90</sup> Most important, the 1950s saw an increase in the Committee's use of FBI informants because Supreme Court decisions in 1956 and 1957 made it more difficult for the Department of Justice to try Communists under the Smith Act of 1940. For Bureau officials, HUAC became a "favored" location to "unveil informers...as a specific disruptive technique under the counterintelligence programs."<sup>91</sup> As long as committee members cooperated on the Bureau's terms, especially in keeping the fact of FBI assistance confidential, Bureau officials were willing to provide "addresses and current employment of prospective witnesses, background information on a rather extensive list of individuals..., the names of financial contributors to the Communist party,...and advice on possible 'friendly' witnesses and alleged experts for future hearings,...as well as editing and correcting errors in committee reports."<sup>92</sup> This formal relationship was modeled on the one between the Bureau and the Senate Internal Security Subcommittee, which began quietly but, in this case, with Attorney General McGrath's approval, in March 1951.

Much as with the House Un-American Activities Committee, FBI officials had initially forged an informal, limited relationship with the leadership of the Senate Judiciary Committee. In August 1947, Senator Chapman Revercomb, a Republican from West Virginia and chair of a subcommittee of the Judiciary Committee, solicited the assistance of Bureau officials for background checks on potential employees. Revercomb

<sup>89</sup> F.J. Baumgardner to A.H. Belmont, 9 September 1955, FBI File# 61-7582-NR, HUAC Files.

<sup>90</sup> Theoharis and Cox, 320.

<sup>91</sup> O'Reilly, 247.

<sup>92</sup> Theoharis and Cox, 319-321

explained that he “did not want to hire people who belonged to organizations which are interested in bringing in certain groups of immigrants.”<sup>93</sup> Informed that the Bureau’s appropriation did not cover that type of work, Revercomb insisted on a meeting with Bureau officials, at which time he pointed out “We gave you all you asked for, didn’t we?” This kindness, Revercomb posited, required a *quid pro quo*, in this case having the Committee’s potential investigators checked against the Bureau’s files.<sup>94</sup> Bureau officials reluctantly agreed to perform the requested name check “in view of the fact that we have made other investigations for Committees on the Hill.”<sup>95</sup> Director Hoover forwarded the results of the name checks to Senator Revercomb, noting specifically that four of those identified by Revercomb had records in the Bureau’s files.<sup>96</sup> This limited assistance eventually led Hoover and the Bureau to monitor the subcommittee’s activities and, further, to become involved directly when the reputation of the Bureau was threatened.

In November 1948, the Senate subcommittee began searching for new ideas on “necessary amendments to present Immigration and Naturalization laws.” As part of this investigation, subcommittee investigators focused on the New York office of the Immigration and Naturalization Service. The subcommittee’s investigators asked the INS inspectors about the FBI’s cooperation with the INS. According to a Bureau source, “The Senate investigators assumed that the FBI in the past had been uncooperative.” In response, an INS inspector characterized his office’s relationship with the Bureau as fine and he hoped “the Senate investigators would not cause a deterioration of relations

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<sup>93</sup> A. Rosen to E.A. Tamm, 6 August 1947, FBI# 62-88217-X, FBI Series 20: Senate Subcommittee on Security and Terrorism, Marquette University Archives. Hereafter, SISS Files.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> J. Edgar Hoover to Senator Chapman Revercomb, 21 August 1947, FBI# 62-88217-X5, SISS Files.

between the two bureaus.”<sup>97</sup> Reacting to this report from a New York special agent, senior Bureau officials began asking which subcommittee had asked these questions. Director Hoover wanted to “promptly ascertain this.”<sup>98</sup> Upon “discreet inquiry” with the INS, Assistant Special Agent in Charge of the Bureau’s New York Office, Alan Belmont, learned that questions had been asked by the “Revercomb Committee,” and that Revercomb was “Chairman of a subcommittee of the Judiciary committee on the Immigration and Naturalization Service.”<sup>99</sup> A Bureau official thereupon met with Senator Revercomb, who suggested meeting with the investigator who asked the questions. This meeting was never held because Ladd, the assistant director of the Intelligence Division, felt that the INS investigator, Ahrens, had “been critical due to his inability to obtain information from the Bureau files.”<sup>100</sup> Not having earned the trust of Bureau officials, Ahrens was denied access to their information. Instead, Bureau officials jealously guarded their information, sharing it with the Senate subcommittee only when it suited their goal of promoting anti-communism. This level of cooperation took time to develop, as not only were Bureau officials involved, but also people employed in the Attorney General’s office. One of the most important features of this growing cooperation was the importance of a senator’s personal relationship with Director Hoover.

A member of the Senate Judiciary Committee, Senator Pat McCarran, a conservative Democrat from Nevada, emerged over the years as one of Hoover’s staunchest allies in Congress. He enjoyed a close relationship with Hoover that dated at least from 1940 when the Senator defended Hoover against the attacks of Nebraska

<sup>97</sup> Edward Scheidt to J. Edgar Hoover, 22 November 1948, FBI# 62-88217-1X, SISS Files.

<sup>98</sup> H.B. Fletcher to D.M. Ladd, 22 November 1948, FBI# 62-88217-1X1, SISS Files.

<sup>99</sup> D.M. Ladd to Hoover, 24 November 1948, FBI# 62-88217-1X2, SISS Files.

<sup>100</sup> L.R. Pennington to D.M. Ladd, 2 December 1948, FBI# 62-88217-1X4, SISS Files.

Senator George Norris, one of the Bureau's harshest critics. McCarran's prominence as a red hunter began when he attached a rider to a State Department appropriations bill in 1946 that authorized the "secretary of state to dismiss summarily any individual whose employment he deemed a threat to national security." This rider was an underlying reason for President Truman's March 1947 decision to institute a federal employee loyalty program.<sup>101</sup>

McCarran cemented his status as an anti-communist in 1950, when he led a bipartisan coalition in passing the Internal Security Act of 1950, with Congress overriding Truman's veto by large margins. Many in the government's internal security apparatus, including the Bureau and the Department of Justice, supported this act, an omnibus bill combining several security proposals.<sup>102</sup> Ironically, one aspect of the Act caused major problems for Bureau officials. The problem was solved as, for one of the first times, Bureau officials decided to ignore the will of Congress and continue along their own self-determined path.

In late 1939, Bureau officials created the Custodial Detention index, designed to list "both aliens and citizens of the United States, on whom there is information available that their presence at liberty in this country in time of war or national emergency would be dangerous to the public peace and the safety of the United States Government." Hoover counseled field offices that "the purpose should be entirely confidential," and, accordingly, Bureau officials did not brief the attorney general about the program's existence until June 1940.<sup>103</sup> Even then, as new attorneys general came into the executive branch, Hoover continued to ignore their requirements about altering this act. When

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<sup>101</sup> Ibid., 2-3

<sup>102</sup> Ibid., 7.

<sup>103</sup> As quoted in Theoharis, *Spying on Americans*, 41-42.

Attorney General Biddle ordered the program discontinued because “these individual danger classifications...serve no useful purpose,” Hoover complied in name only. Instead of discontinuing the program, Hoover ordered his agents to change “the program’s nomenclature.” For example, Hoover wrote, “The character of investigations of individuals who may be dangerous or potentially dangerous to the public safety or internal security of the United States shall be ‘Security Matter’ and not ‘Custodial Detention.’”<sup>104</sup> This change was kept “strictly confidential, and should at no time be mentioned or alluded to in investigative reports, or discussed with agencies or individuals outside the Bureau.”<sup>105</sup> With a new attorney general, the Security Index received another update in 1948, this time with the blessing of Department of Justice officials.

In August 1948, Attorney General Tom Clark instituted a “secret emergency detention program” which was “indifferent to constitutional questions.” Instead of seeking legislation to create the program, the framers “intended to secure *ex post facto* legislative authorization by immediately exploiting the crisis atmosphere following a declaration of war or national emergency.”<sup>106</sup> Unaware of this program, Title II of the Internal Security Act of 1950 legislated standards for the creation of an emergency detention program that were far more restrictive than the program created in 1948.<sup>107</sup> For example, the 1948 plan included the suspension of the writ of habeas corpus, while the 1950 legislation did not; it required judicial warrants to detain individual violators.<sup>108</sup> Faced with these differences, the FBI Director asked for clarification from the attorney general, who informed Hoover that “the ongoing detention program of August 3, 1948,

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<sup>104</sup> Ibid., 43.

<sup>105</sup> Ibid., 43-44.

<sup>106</sup> Ibid., 45-46.

<sup>107</sup> Ibid., 48.

<sup>108</sup> Ibid.

should in no way be contravened by passage of the Internal Security Act.”<sup>109</sup> If such a program became necessary, Assistant Attorney General James McInerney informed Hoover, “the department would introduce legislation repealing the 1950 act’s detention provisions.”<sup>110</sup> By 1951, however, Department officials advised Hoover “to conform more closely” with the Internal Security Act’s provisions, creating an “ambivalence [which] haunted the Bureau: at times Justice Department officials had apparently decided to ignore the 1950 act; at other times these officials had concluded that the Internal Security Act could not be ignored.”<sup>111</sup> Because of this hesitancy, Bureau officials were in a difficult position—either ignore the will of Congress or the will of the Department of Justice.

In response to Hoover’s insistence to clarify the Bureau’s Security Index responsibilities, Attorney General McGranery wrote in 1952 that he would not “directly order the FBI to ignore legislatively mandated provisions.” Moreover, he could not order “noncompliance with the Internal Security Act’s emergency detention provision; he simply declared the department [of Justice’s] ‘intention’ and represented this not as the department’s exclusive decision but concurrence with the ‘Bureau’s concepts’ of the emergency detention program and Security Index standards.”<sup>112</sup> By shying away from the discussion, McGranery’s actions “constituted a conscious policy decision not to abide by congressionally mandated standards.”<sup>113</sup> Bureau officials effectively ignored the Internal

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<sup>109</sup> Ibid., 49.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid., 51.

<sup>112</sup> Ibid., 53-54.

<sup>113</sup> Ibid., 54.

Security Act's stated plans on custodial detention, contravening "the spirit and intent of congressional policy."<sup>114</sup>

The provisions of the Internal Security Act of 1950 also defined a new form of sedition, making it a felony to "combine, conspire, or agree with any other person to perform an act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship" controlled by a foreign government. It also required "communist-action" and "communist-front" organizations to register with the newly created Subversive Activities Control Board.<sup>115</sup> Public reception of this law proved positive. It gave Republicans the upper hand on the communist issue by painting Truman's veto as reflecting a dangerous indifference, causing the chairman of the Senate Judiciary Committee, James O. Eastland, to call for the creation of a subcommittee to continue to study "all laws relating to espionage, sabotage, and the protection of the internal security of the United States."<sup>116</sup> This subcommittee became the Senate Internal Security Subcommittee and was initially chaired by Pat McCarran himself.

The official relationship between the Bureau and the subcommittee began on March 15, 1951, following a closed session of the Senate Judiciary Committee attended by six Senators, including Pat McCarran; his assistant Julien Sourwine; Attorney General McGrath; and Director Hoover.<sup>117</sup> Senator McCarran initiated the meeting following an earlier meeting with Hoover in which McCarran had asked if the Bureau "could and would be of assistance" to the Senate Internal Security Subcommittee. Hoover suggested a meeting with Attorney General McGrath in which the senators could "outline...exactly

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<sup>114</sup> Ibid., 40.

<sup>115</sup> Gerard, 8.

<sup>116</sup> Gerard, 28.

<sup>117</sup> Gerard, 48.

what the intentions and purport of the...Committee would be and make a request for cooperation and such assistance as the FBI might be able to render.”<sup>118</sup> Hoover separately advised McGrath that there were certainly “matters of parallel interest” between the subcommittee and the Bureau and that the attorney general would certainly want the FBI to be “as cooperative as possible.” Hoover repeated his usual condition, however, emphasizing to the attorney general that the subcommittee “could not have access to any files of the FBI.” According to Hoover, members of the subcommittee indicated they “did not desire any original files but that they were hopeful of affecting [sic] a working arrangement with the FBI which would save time and bring about results beneficial to the Committee and to the FBI.”<sup>119</sup>

At an executive session of the subcommittee, held on March 15, McGrath assured the senators that “he was desirous of being whatever assistance he could to the Committee but he felt that any decisions as to exactly what the Committee might have would be one which should be passed upon by the Director of the FBI.” When the senators then asked about access to the Bureau’s files, Hoover responded that “as a general rule the Bureau files could not be made available to members of the Committee, but that there would be certain situations in which some portions of the file or certain exhibits might be made available for examination. In many instances when the file could not be made available, a summation with appropriate leads and clues could be given the Committee.”<sup>120</sup> Because the Bureau’s files contained the “identities of very confidential informants and the sources of very extremely technical and confidential information,” the Bureau had to be very careful about who would have unfettered access to them. The FBI

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<sup>118</sup> Hoover to Attorney General James McGranery, 16 July 1952, FBI# 62-88217-356, SISS File.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

Director further emphasized that because “the goal of the Committee and the FBI were the same, namely, strengthening the internal security of the country, that an informal approach to this problem might produce better results.” Each party would designate a liaison who would work together to pass information—the Committee forwarding its findings, the FBI information in FBI files. Attorney General McGrath was “very much satisfied with the arrangements” and agreed to leave the Bureau in charge of the details. His only request was that the Bureau give him a copy of any material that was supplied to the subcommittee.<sup>121</sup> This arrangement guided the Department of Justice’s policy toward the Senate Internal Security Subcommittee for the next seven years, until Bureau officials realized “their strategy of leaking derogatory information on subversive individuals and organizations to congressional committees was becoming tenuous in light of Supreme Court rulings in 1956-7 which restricted the use of FBI reports.”<sup>122</sup> As early as 1953, however, the relationship between the Bureau and the subcommittee began to break down, insofar as the subcommittee’s use of the Bureau’s information became “more overtly partisan and reckless.”<sup>123</sup> The most illustrative example occurred in November 1953 when the new Republican Eisenhower administration pointedly attacked the Truman administration’s handling of the communists-in-government issue. New Republican leaders such as William Jenner, the new Republican chair of the Senate Internal Security Subcommittee, promised to reinvestigate the former administration’s actions. Even with some reservation about the volume of new SISS requests, Bureau

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<sup>121</sup> Ibid.

<sup>122</sup> Gerard, ii-iii.

<sup>123</sup> Ibid., ii.

officials provided Jenner information regarding the mid-1940s allegations of Elizabeth Bentley and Whittaker Chambers.<sup>124</sup>

Since the early days of the Truman administration, conservative Republican and Democratic members of Congress had accused the president and his staff of being “soft” on communism. They charged that his administration had been indifferent or looked the other way when appointing officials who had communist sympathies. These allegations began in 1945, when an ex-radical named Elizabeth Bentley approached a FBI Connecticut office confessing to have been the courier for a communist espionage ring during World War II. Members of this ring, Bentley told Bureau agents, were “American Communists holding second-level appointments in the federal government.” Using their positions, these spies had passed government documents to Soviet officials through Bentley.<sup>125</sup> One of those named by Bentley was Harry Dexter White, whom Truman had later appointed to the International Monetary Fund, even after receiving, according to Hoover, information questioning White’s loyalty (based on Bentley’s unsubstantiated allegations).<sup>126</sup> When Bentley’s allegations were examined by HUAC in 1948, with many decrying them as “a partisan anti-New Deal ploy,” another ex-Communist came forward with similar allegations. Whittaker Chambers, a senior editor of *Time* in 1948, named government officials as members of a communist cell that sought to influence Washington in the 1930s.<sup>127</sup> With Chambers’s credibility only slightly higher than Bentley’s, Truman placed HUAC’s charges at the forefront of the 1948 elections.<sup>128</sup>

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<sup>124</sup> Athan Theoharis, *Chasing Spies: How the FBI Failed in Counterintelligence but Promoted the Politics of McCarthyism in the Cold War Years* (Chicago, Ivan R. Dee, 2002), 214.

<sup>125</sup> Theoharis and Cox, 222.

<sup>126</sup> Ibid., 271.

<sup>127</sup> Ibid., 250-251.

<sup>128</sup> Ibid., 251.

While the Democrats won that election, the 1952 election of a Republican president, as well as slight Republican majorities in both houses of Congress, allowed conservative Republicans who chaired crucial committees (notably HUAC and SISS) to exploit the opportunity to document the communist influence issue. At the same time, these hearings would serve to highlight the lackadaisical nature of the Truman administration's handling of security matters and begin an era of increased national security with new leaders in charge.

The most overtly partisan of these attacks came from President Eisenhower's first attorney general, Herbert Brownell. In a luncheon speech to a businessman's club in Chicago in November 1953, Brownell charged Truman with "knowingly betraying the security of the United States" by appointing Harry Dexter White to the International Monetary Fund.<sup>129</sup> The former president responded to this accusation by accusing Brownell of McCarthyism and defending his handling of the White matter. Both Brownell and Hoover, in public testimony before the Senate Internal Security Subcommittee, sought to legitimize the Attorney General's claims about the past administration's negligence. Hoover's controversial testimony threatened to undermine the Bureau's relationship with the Southern Democrats and seemed to highlight an unseemly relationship with the subcommittee. Forced to become involved in an overtly partisan situation, Hoover's testimony brought into question his reputation as an apolitical director of a fact-finding bureau.

After hearing Attorney General Brownell's charges against him, Truman immediately responded. While defending his actions, the former president first assured

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<sup>129</sup> Harry S. Truman, 16 November 1953, Harry S. Truman Papers, Post Presidential, Harry Dexter White, Harry S. Truman Presidential Library, Independence, Missouri. Hereafter, Truman Papers.

the American public that he would uphold the independence of the office of the president by refusing to comply with a subpoena to testify before the House Un-American Activities Committee. To do so, he argued, “would have undermined the constitutional position of the Office of the President of the United States” because it would make that office beholden to the whims of Congressional committees.<sup>130</sup> Truman then refuted Brownell’s specific allegations that he had knowingly appointed White to the International Monetary Fund after being told about his potential disloyalty.

His appointment of White, Truman argued, was a matter of expedience. Because the evidence against White was, at the time, sparse, Truman listened to his Attorney General, Tom Clark, and the Secretary of the Treasury, Fred Vinson, and allowed the appointment to proceed. He reasoned that “the charges which had been made to the FBI against Mr. White also involved many other persons. Hundreds of FBI agents were engaged in investigating the charges against all those who had been accused. It was of great importance to the Nation that this investigation be continued in order to prove or disprove these charges and determine if still other persons were implicated.”<sup>131</sup> In fact, had the appointment been held up, other conspirators may have been alerted to the ongoing investigation. The course he had taken, Truman maintained, “protected the public interest and security and, at the same time, permitted the intensive FBI investigation then in progress to go forward. No other course could have served both of these purposes.”<sup>132</sup> Truman’s defense placed Hoover and the FBI squarely in the crosshairs of the White controversy, implying that Bureau officials had allowed the White confirmation to continue so as not to compromise their ongoing investigation.

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

Hoover responded to this characterization during his testimony before the Senate Internal Security Subcommittee.

The nature of Brownell's attack, according to Truman, made clear his intentions. Instead of seeking to cleanse the government of communist influence, Attorney General Brownell had acted based on partisan political motives. Truman pointedly stated that "the manner and the timing of what has been done make it perfectly clear that the powers of the Attorney General have been prostituted for hopes of political gain. No election is worth so much."<sup>133</sup> In order to win election, the administration had "fully embraced McCarthyism.... It is the corruption of truth, the abandonment of our historical devotion to fair play. It is the abandonment of the 'due process' of law. It is the use of the big lie and the unfounded accusation against any citizen in the name of Americanism or security. It is the rise to power of the demagogue who lives on untruth; it is the spread of fear and the destruction of faith in every level of our society."<sup>134</sup> Stung by Truman's charges, Brownell searched for an appropriate venue to respond to the former president's charges. SISS offered such a venue, but the cost of bringing Director Hoover into this partisan fray over time became a key factor in FBI official's reassessing their covert relationship with this influential subcommittee. Continued cooperation could, in the long run, undermine the FBI's stature and legitimacy.

The Republican chairman of SISS in 1953 was William Jenner of Indiana, chosen by Republican Party leaders because he was "more amendable to party discipline and less prone to the reckless partisanship of McCarthy."<sup>135</sup> This subcommittee, therefore, provided a safe forum through its ability to conduct hearings intended to resolve the

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<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Gerard, 281.

conflicting accounts. It would be easier for the Eisenhower administration to defend its actions as non-partisan before these senators, as opposed to the perceived crude partisanship of Senator McCarthy or the House Un-American Activities Committee. Before calling Brownell to testify, Senator Jenner announced that the purpose of the public hearing was to determine “which aspect of the loyalty machinery allowed so many Soviet agents to remain in high position of influence in the United States in the face of impressive derogatory security information.”<sup>136</sup> The question remained relevant because the subcommittee had found that there was “ample evidence that the Federal Bureau of Investigation and other agencies learned the underlying fact of the Communist conspiracy, and time and again performed their duty and notified the proper administrative agencies of this information.”<sup>137</sup> Despite all of the evidence given the Truman administration about White’s suspected loyalty, developed from Bentley’s allegations, Truman appointed White to his highest government position. Instead of heeding Bureau warnings and dismissing White, Truman recklessly endangered American government by keeping White in government service. For conservative Republicans, repeating these old allegations created an opportunity to damage the Democratic administration by labeling it “soft on communism.” The subcommittee, therefore, hoped Attorney General Brownell could enlighten them about why this information had not been acted upon by the prior administration.

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<sup>136</sup> US Congress, Senate. *Interlocking Subversion in Government Departments*. Hearings before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary. 83d Cong., 1st Sess., on Interlocking Subversion in Government Departments, November 12, 17, 18, 23, and December 2, 3, and 16, 1953 (Washington, D.C.: United States Government Printing Office, 1954), 1109. Hereafter, *Interlocking Subversion in Government Departments*.

<sup>137</sup> Ibid., 1110.

Brownell began his testimony by defending his Chicago speech. Since the inauguration, the Attorney General recounted, the Eisenhower administration “had been concerned with...cleaning out the Government.” The White case, in his opinion, showed “how successful espionage agents had been in penetrating our Government at that time and how lax our Government was at that time in meeting such a grave problem.”<sup>138</sup> Brownell claimed that Truman had appointed White to the International Monetary Fund despite “ample evidence that he was not loyal to the interests of our country. That was enough. Government employment is a privilege, not a right, and we don’t have to wait until a man is convicted of treason before we can remove him from a position of trust and confidence.”<sup>139</sup> Brownell concluded by proposing that Congress enact two new laws that would allow for better prosecution of espionage cases. The first suggested law would “allow the Government to use wiretap evidence to prove its espionage cases.” Brownell told the subcommittee there were “cases of espionage presently in the Department of Justice, but since some of the important evidence was obtained by wiretapping, the cases cannot be proved in court and therefore there will be no prosecution so long as the law remains in its present state.”<sup>140</sup> Interestingly, Brownell admitted the Department of Justice broke the law by utilizing wiretaps and he now wanted Congress to legalize those actions. His second proposal was to enact a law granting immunity to witnesses suspected of communist loyalty who refused to testify by taking the Fifth Amendment. This new law would make it easier for the administration to “track down the higher ups engaged in conspiracy to overthrow the Government by force and violence.”<sup>141</sup> These suggested laws

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<sup>138</sup> Ibid., 1111.

<sup>139</sup> Ibid., 1127-1128.

<sup>140</sup> Ibid., 1130.

<sup>141</sup> Ibid., 1130-1131.

were taken under advisement by the subcommittee. The wiretap proposal was never adopted, although the immunity proposal was. This suggested that members of Congress and Bureau officials were more interested in stopping the spread of communism than in civil liberties guaranteed by the Constitution. The subcommittee then called Director Hoover to testify about Truman's claim that the White appointment was continued to avoid compromising the Bureau's investigation. Despite his preference for avoiding such public forums, in which his Bureau's reputation may be harmed and its files opened to public scrutiny, Hoover appeared. This breech in the director's preferred course of action in turn led the FBI Director to reassess his earlier willingness to cooperate covertly with the subcommittee.

After Brownell's testimony, Chairman Jenner called J. Edgar Hoover, whom he argued should be above any of the recent controversy. However, because of the "widely publicized rumor" that Hoover and Truman had made an agreement to allow White's appointment to continue in order to protect a Bureau investigation, Jenner felt it necessary that Hoover "give his account." Above all, Jenner wanted to make sure Hoover was kept "aloof from any controversy."<sup>142</sup> The FBI Director then testified that the Bureau was "a service agency. It does not make policy; it does not evaluate; it secures facts upon which determinations can be made by those officials of the United States Government who have the responsibility of taking whatever action is indicated. We do not inject ourselves into legislative matters. We do not express opinions or draw conclusions in our investigative reports."<sup>143</sup> The facts of the case, according to Hoover, plainly removed the Bureau from all responsibility for White's appointment.

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<sup>142</sup> Ibid., 1141-1142.

<sup>143</sup> Ibid., 1142.

Hoover went on to portray White's case as but one example of Communists' attempts to infiltrate the United States government over the previous 35 years. The Bureau had notified presidential aides about the allegations of disloyalty against White seven different times, yet the Truman administration had not taken any action. Hoover, moreover, defended Elizabeth Bentley, the informant who had, in 1945, alerted the Bureau to White's activities, emphasizing that her allegations had been verified and subjected to intense scrutiny during grand-jury testimony.<sup>144</sup> Hoover then addressed the "alleged secret agreement" between the Bureau and the Truman administration to keep White under surveillance following his appointment. He had never agreed, Hoover insisted, with any administration official to continue surveillance. Nonetheless, in spite of his misgivings, White was appointed to the IMF where he would be surrounded by people who were not security risks.<sup>145</sup> According to Hoover, the Bureau did not (and could not) endorse a particular path for the administration to take with White without compromising its reputation as a purely investigative body.<sup>146</sup> While Hoover hoped his testimony would quiet the controversy surrounding Brownell's remarks, they had a complicating effect on the Bureau's relationship with the Senate Internal Security Subcommittee, ultimately forcing FBI officials to reassess their policy of cooperating surreptitiously with the Subcommittee. Chairman Jenner's subsequent efforts to use the information in Bureau files made it more difficult for Bureau officials to trust the confidentiality of these reports.

Brownell's partisan attack on Truman's loyalty forced Hoover to testify publicly to "recover the attorney general's reputation." His appearance led influential Southern

<sup>144</sup> Gerard, 302; *Interlocking Subversion in Government Departments*, 1142-1145.

<sup>145</sup> Gerard, 303.

<sup>146</sup> *Interlocking Subversion in Government Departments*, 1147.

Democrats to criticize Hoover's involvement in the unseemly affair, with one even threatening to remove him as director when they regained control of Congress in 1954. While this threat was never acted upon, Hoover was troubled. His concerns intensified when Jenner began "boasting of his committee's access to bureau files." This breach of protocol from McCarran's days soured Hoover on the Committee—given his insistence that the Subcommittee honor his condition of confidentiality for any aid to the subcommittee.<sup>147</sup> By April 1954, Bureau officials had limited whatever information they provided to the Senate Internal Security Subcommittee to public-source material. Just weeks later, however, Hoover concluded that any information, including public-source material, "might be inaccurately and unfairly portrayed as an FBI report." To protect the Bureau's reputation, therefore, even publicly available information would not be given to any Congressional committee.<sup>148</sup> Attorney General Brownell endorsed Hoover's actions, leading to the termination of supplying congressional committees with any information besides investigations of staff members. The committees would not be told of this new policy, which began with the new Democratic Congress of 1954-55. The chairmanship of the Senate Internal Security Subcommittee passed to a conservative Democrat from Mississippi, James Eastland, who had been part of a group that warned Hoover his public testimony next to Brownell threatened their continued support of the Bureau. While they could not follow through on their threat to remove Hoover as Director, these conservative

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<sup>147</sup> Gerard, 306-307.

<sup>148</sup> Hoover to Attorney General, 1 April 1954, FBI# 62-88217-NR; Hoover to William Rogers, Deputy Attorney General, 9 April 1954, FBI# 62-88217-1479, both in SISS Files.

Democrats certainly had the ability to make Hoover's life more difficult.<sup>149</sup> Accordingly, any new requests for information were to be denied when received.<sup>150</sup>

By willingly cooperating with the Bureau, both the Senate Internal Security Subcommittee and the House Un-American Activities Committee had, in effect, forfeited their constitutionally mandated role as overseers of this executive agency. Instead, both committees helped cover up abuses. Oversight of the Bureau was abandoned because Bureau officials and committee members shared the same anti-communist ideology and because selective access to Bureau files advanced the committee's partisan interests. This cooperative, and covert, relationship was severed only when Bureau officials decided that the risk of its exposure became too great. The impropriety of the relationship mattered little.<sup>151</sup> A similar path was taken in the case of senior FBI officials' relationship with Senator Joseph McCarthy. As in the case of both HUAC and SISS, FBI officials initially proffered selected Bureau files to McCarthy, but ultimately lost that trust when the Senator failed to maintain confidentiality.

As had been the case for Congressmen J. Parnell Thomas and Pat McCarran, Senator McCarthy offered Hoover the opportunity to publicize the menace of communism without the burden of having to produce admissible evidence at trial. Because FBI investigations of communist activists had not uncovered evidence of illegality, or had gathered information illegally, congressional committees offered an alternative outlet for the use of the FBI's acquired data. Hoover's relationship with Senator Joseph McCarthy predated the senator's electrifying catapult to national

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<sup>149</sup> Theoharis and Cox, 273.

<sup>150</sup> Hoover to Tolson, Nichols, Boardman, and Belmont, 14 June 1954, FBI# 62-88217-NR, SISS File; Gerard, 312.

<sup>151</sup> Gerard, 392-393.

prominence in 1950 and began when McCarthy was first elected to the Senate in 1947.

The FBI Director liked McCarthy's combative style and felt that politically the senator shared his "brand of conservatism."<sup>152</sup> In February 1948, Hoover even asked the senator to deliver the graduation address at the FBI National Academy, an honor previously reserved for prominent senators like Pat McCarran, Homer Ferguson of Michigan and Alexander Wiley of Wisconsin.<sup>153</sup> Hoover also agreed to appear on a radio program with McCarthy designed to educate Wisconsin voters about events in Washington. In this case, Hoover's aides prepared both the questions which McCarthy would ask and the director's answers, and, as such, praised the FBI's excellent reputation in Washington, the quick actions following Pearl Harbor to round up "every potential saboteur and dangerous enemy agents," services provided to local law enforcement agencies, and the responsibility to protect the nation from the threat of communism.<sup>154</sup> In the most extraordinary instance of courtesy, Hoover informed the Honolulu field office about a visit by McCarthy's administrative assistant, Jean Kerr. The field office was ordered to extend "every possible courtesy" with local agents becoming intimately involved in Kerr's situation after she broke her hip following a fall at a private residence. A premier orthopedic surgeon was recommended to perform the operation and the field office made sure Kerr's stay in a nursing home over the Christmas holiday had the proper festive atmosphere. On her return to the mainland, Hoover made certain the field offices in Los Angeles and New York provided needed wheelchair and ambulance services.<sup>155</sup> With this

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<sup>152</sup> Theoharis and Cox, 280.

<sup>153</sup> Hoover to McCarthy, 3 February 1948, FBI # 94-37708-2, FBI Series 64: Joseph McCarthy, Marquette University Archives. Hereafter, McCarthy Files.

<sup>154</sup> Theoharis and Cox, 321; Jones to Nichols, 11 April 1949, FBI# 94-37708-9, McCarthy Files.

<sup>155</sup> Theoharis and Cox, 281.

already close personal relationship, Hoover had positioned himself to aid McCarthy once the senator began charging government agencies as riddled with communists.

McCarthy catapulted to national prominence in February 1950 in a speech in Wheeling, West Virginia, in which he claimed to have a list of 205 “card-carrying Communists” employed in the State Department. Hoover had his aides immediately and covertly assist McCarthy in sustaining his charges, at the time subject to pointed and skeptical criticism as unfounded and irresponsible. Eager to rebut McCarthy, Senate Democrats initiated an investigation into McCarthy’s charges, led by Senator Millard Tydings. Rallying to McCarthy’s aid, conservative newsmen volunteered their research and access to information from FBI files and Hoover himself willingly upgraded McCarthy’s staff by recommending the appointment of a former FBI agent Don Surine. Surine brought both his experience and, more important, his contacts within the Bureau. With this support system in place, the Wisconsin Senator successfully withstood the finding of the Democratic majority of the so-called Tydings Committee that his charges were without merit. McCarthy, in fact, successfully labeled the majority report a “whitewash.”<sup>156</sup> Hoover’s covert assistance proved invaluable to the senator, who, nonetheless, recklessly began to publicize his connections with the Bureau, putting the covert relationship in peril.

In July 1950, McCarthy supported his contention that the Tydings Committee had failed to investigate fully communists in government, citing the case of one of the eighty-one State Department employees McCarthy had claimed was a Communist. McCarthy had given this employee, Edward Posniak, a pseudonym of Mr. X. McCarthy claimed to have proof that the Tydings Committee had overlooked evidence of Mr. X’s disloyalty.

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<sup>156</sup> Ibid., 283-284.

He cited a secret FBI report, a report that had not been included in Posniak's loyalty file, which had been reviewed by the Committee. This absence, McCarthy continued, confirmed his contention that the Committee's findings whitewashed the Truman administration's lax efforts at removing disloyal members of the executive branch.<sup>157</sup> Upon learning of McCarthy's claims to have access to Posniak's loyalty file, Attorney General J. Howard McGrath contacted Hoover and inquired "whether or not the purported contents of the reports cited [by McCarthy] were in fact taken from official FBI reports."<sup>158</sup> McGrath, furthermore, demanded that the FBI conduct a "complete investigation" into the matter, since "the reports of the Bureau have been compromised and misrepresented" and McCarthy's apparent possession was illegal in that he had unauthorized possession of a classified document.<sup>159</sup>

Unable to ignore McGrath's demand, FBI Director Hoover was in a bind in that he had to shield that the Bureau, in fact, was McCarthy's source. Hoover subsequently (and craftily) reported to McGrath that the "secret report" which McCarthy had cited was "not, of course, an official FBI report." While it was titled "United States Civil Service Commission—Report of Investigation," Hoover denied it was an official Civil Service Commission document but was, instead, a "summary of material actually contained in the Bureau's loyalty report," but did not include certain information.<sup>160</sup> FBI officials, however, could not discontinue this investigation because the attorney general pointed out "there may have been a violation of [United States law] dealing with the theft,

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<sup>157</sup> Ibid., 284

<sup>158</sup> J. Howard McGrath to Hoover, 25 July 1950, FBI# 121-41668-2, McCarthy Files.

<sup>159</sup> Peyton Ford to Hoover, 3 August 1950, FBI# 121-41668-4, McCarthy Files; Theoharis and Cox, 284-285.

<sup>160</sup> Hoover to Attorney General J. Howard McGrath, 27 July 1950, FBI# 121-41668-3, McCarthy File; Theoharis and Cox, 284-285.

embezzlement and unlawful removal of government documents.”<sup>161</sup> Hoover proposed that agents begin the required investigation by interviewing Senator McCarthy. During that interview, McCarthy declined to name his source, as did his staff. FBI agents were never able to identify McCarthy’s source.<sup>162</sup> Hoover carefully covered the FBI’s involvement with McCarthy and Surine. In this case as well as in other instances of FBI assistance to McCarthy, the senator had not been provided with FBI reports but summaries of such reports. This procedure was inadvertently confirmed by an FBI report of a meeting between Surine and an agent in the Washington field office.

In September 1950, Don Surine asked the Washington field office for “a copy of the Bureau’s summary report on [Owen] Lattimore.” Surine had then advised his FBI contact that this report should be “handled in the same fashion as was done in the [Posniak] case, explaining he would insert the information appearing in the Bureau report in the form of a summary of information appearing in the [Civil Service Commission] investigative files, thus making it appear that his office had secured a CSC file rather than a Bureau file. In this way, [Surine] said he would not violate any Federal laws, inasmuch as the CSC Summary report would not be a bona fide report of a Government agency.”<sup>163</sup> Hoover avoided exposing Surine’s information to McGrath by not including in his report to the attorney general this report on Surine’s interview. Hoover specifically ordered that the details of the interview, where Surine had initially denied knowing anything about the Posniak case, should not be disseminated beyond the Bureau. When McGrath demanded that the FBI interview Surine again, Surine refused. Only Surine’s formal refusal to

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<sup>161</sup> Hoover to Attorney General J. Howard McGrath, 27 July 1950, FBI# 121-41668-3, McCarthy File.

<sup>162</sup> Hoover to SAC, Washington Field Office, 7 August 1950, FBI# 121-41668-5, McCarthy Files; Theoharis and Cox, 285.

<sup>163</sup> A.H. Belmont to D.M. Ladd, 4 October 1950, FBI# 121-23278-267X, McCarthy Files.

comment was relayed to the attorney general. In this way, Hoover successfully doctored documents to prevent the Attorney General's (and the President's) discovery of the origin of McCarthy's information—the Bureau itself.<sup>164</sup>

With the Republican takeover of Congress and the presidency in the November 1952 elections, Senator McCarthy looked forward to Hoover's continued support. The Senator's power, moreover, had increased as McCarthy had become chairman of the Senate Committee Investigating Governmental Operations and its Investigations subcommittee. With this enhanced status, McCarthy "anticipated closer cooperating with and more extended use of the FBI and its facilities following the beginning of the new Congress." While it "was not always to ones [sic] advantage to be seen talking to or associating with" him, McCarthy continued, this would change with the results of the new election. McCarthy planned to "confer with [Hoover] in the not too distant future relative to obtaining suggestions for prospective investigative personnel for his investigative committee." At the time having no misgivings about McCarthy's planned activities, Hoover ordered Associate Director Tolson to give the question of McCarthy's staff "prompt attention."<sup>165</sup> McCarthy's first chief counsel, Francis Flanagan, proved ineffective, a continual problem for the Senator given the quality of and conflict among his staff, all as a result of Flanagan. He was eased out of power, with McCarthy replacing him with J.B. Matthews, a former investigator with the Dies Committee who had fallen out of favor with Hoover. Hoover learned of this replacement through his "contacts with the American Legion," and, belatedly, from McCarthy himself.<sup>166</sup>

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<sup>164</sup> Theoharis and Cox, 286-287.

<sup>165</sup> Guy Hottel to Hoover, 28 November 1952, FBI# 94-37708-76X, McCarthy Files; Theoharis and Cox, 293; Hoover to Tolson, 1 December 1952, FBI# 94-37708-77, McCarthy Files.

<sup>166</sup> Theoharis and Cox, 294.

During a meeting with L.B. Nichols about Matthews' appointment, McCarthy praised Matthews as "very experienced" with the type of personality needed to control the Committee. This attitude, McCarthy confided, would undoubtedly be "pleasing to the Director."<sup>167</sup> Nichols disabused McCarthy of this notion, emphasizing that "it was difficult for us to forget some of the activities of [Matthews] during the days of the Dies Committee when we were fighting with our backs to the wall, and further there had been instances wherein we had contacted [Matthews] and shortly thereafter seen items in the papers."<sup>168</sup> Taken aback, McCarthy had been led to believe by his staff that Matthews "was close to the Bureau and the Bureau held [Matthews] in high regard."<sup>169</sup> Nichols conceded Bureau officials had never "expressed ourselves on the point, that naturally we would subordinate our feelings on those fighting Communism." McCarthy, however, "should be cautious about [Matthews] issuing press releases, as during his period with the Dies Committee he was issuing them with great frequency."<sup>170</sup> Then, when Matthews subsequently published an article entitled "Reds and Our Churches" before joining McCarthy's staff, claiming Protestant clergymen were the "largest single group supporting the Communist apparatus in the United States today," Democratic committee members and leading Protestant leaders denounced Matthews. The resultant furor forced McCarthy to demand Matthews' resignation.<sup>171</sup>

McCarthy thereupon attempted to repair the damage between his committee and Bureau officials, and, simultaneously, improve the quality of his staff, by appointing Frank Carr as Matthews' replacement. This decision proved to be McCarthy's biggest

<sup>167</sup> L.B. Nichols to Tolson, 24 June 1953, FBI# 94-37708-NR, McCarthy Files.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Theoharis and Cox, 295.

mistake. While talking with Nichols about other matters, McCarthy expressed relief that “the Director finally approved” of his decision to hire Carr, a current FBI supervisor in the New York office and a close confidant of Jean Kerr and Roy Cohn, two of McCarthy’s closest aides. McCarthy further advised Nichols that he had purposefully “not contacted the Director as he wanted to be in the position of saying that he had not been in touch with the Director.” He had instead sent Jean Kerr to speak with the FBI Director. Returning from this meeting, Kerr had advised McCarthy that Hoover approved the hire, a report Hoover subsequently denied.<sup>172</sup>

Nichols quickly informed McCarthy of the quite different reality. Hoover had told Kerr and Cohn, Nichols disclosed, that he would not support Carr’s appointment. The Director’s position was that the Bureau “would not give Carr a leave of absence, we would not release him, we would not ask him to go to the Committee, we would not approve his going to the Committee.” The appointment of Carr, furthermore, Nichols continued, “placed a very tight restriction on the Bureau that we would have to lean over backwards because if at any time the Committee came up with something having a Bureau angle, the charge would be made that Carr was a pipeline.”<sup>173</sup> McCarthy told Nichols he understood Hoover’s position and he hoped Hoover would “not be too angry.”<sup>174</sup> Nichols responded, stating that the Director would “literally and figuratively ‘give [McCarthy] hell’ the next time they met.”<sup>175</sup> With the hiring of Carr, Hoover decided that the FBI had to draw the line with Senator McCarthy. As a Bureau memo of October 15, 1953 stated, the Bureau had “furnished information to [McCarthy] up until

<sup>172</sup> Theoharis and Cox, 295; Nichols to Tolson, 23 July 1953, Nichols OC Files.

<sup>173</sup> Theoharis and Cox, 295-296; Nichols to Tolson, 23 July 1953, Nichols OC Files.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

late summer [1953] when the Committee appointed former Special Agent Carr as Staff Director. Since then, no information has been furnished to this committee.”<sup>176</sup> Even when, in 1955, the trusted Don Surine asked his FBI contacts about “the possibility of the Senator jumping into the limelight again over matters concerning loyalty of Government employees,” FBI Assistant Director Cartha DeLoach responded that Surine “knew full well we could be of no assistance to him in this regard.”<sup>177</sup> By then, McCarthy had become a disgraced public figure and was no longer in a position to exploit his earlier access and covert relationship with the Bureau. FBI officials were no longer willing to trust him with access to confidential FBI information, having concluded that he would not safeguard the requirement of FBI confidentiality. As had occurred in the case of both the Senate Internal Security Subcommittee and the House Un-American Activities Committee, Bureau officials were no longer willing to sustain a covert relationship with the purpose of educating the public about the menace of communism. When these recipients proved to be incapable (or unwilling) to honor Hoover’s precondition of confidentiality, they lost access to the Bureau’s information.

These relationships confirmed that Bureau officials were willing to aid like-minded members of Congress when it promoted a common interest of Red hunting. The post-war period from 1945 until 1956 also involved other FBI attempts to influence congressional policy in more above-board ways. This involved a continuing discussion in Congress over the question whether to legalize wiretapping. At various times (1951, 1953-54, and 1955), FBI officials, along with members of the Justice Department, sought to work with influential members of Congress to draft legislation to address the existing

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<sup>176</sup> Quoted in Theoharis and Cox, 296.

<sup>177</sup> L.B. Nichols to Tolson, 28 September 1955, FBI# 94-37708-127, McCarthy Files.

ban on wiretapping, a ban that undercut efforts of obtaining convictions of suspected subversives.

As early as President Roosevelt's secret decision in 1940 to authorize wiretapping for "grave matters involving the defense of the nation," the executive branch had sanctioned the Bureau's wiretapping of suspected subversives.<sup>178</sup> Justice Department officials subsequently claimed that the 1934 Act had not banned wiretapping *per se* but only the use of acquired information during criminal proceedings. As Assistant Solicitor General Charles Fahy wrote the attorney general in 1941, "There is no Federal statute that prohibits or punishes wire tapping alone. The only offense under the present law is to 'intercept any communication and divulge or publish' the same."<sup>179</sup> In that year, the Roosevelt administration lobbied Congress to update the wiretapping provisions of the 1934 Federal Communications Act to allow for wiretapping in specific instances. The attorney general wrote to the chairman of the House Judiciary Committee to propose amending the Act, emphasizing that wiretapping would help "with the very practical work of protecting decent citizens, and indeed the nation itself, against criminals, spies, and saboteurs.... Criminals today have the free run of our communications system, but law enforcement officers are denied even a carefully restricted power to confront the criminal with his telephonic and telegraphic footprints. Unless we can use modern, scientific means to protect society against the organized criminal movements of the underworlds, the public cannot look to its law enforcement agencies for the protection it has a right to expect." The attorney general then suggested amending the Act to permit

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<sup>178</sup> Memorandum for the Attorney General from President Franklin D. Roosevelt, 21 May 1940, Hoover OC Files.

<sup>179</sup> Memo for the Attorney General from Charles Fahy, 2 October 1941, Charles Fahy Papers: Box 36, Folder 7, FDR Library.

the use of wiretapped evidence in espionage, sabotage, kidnapping, and extortion cases when wiretaps were installed based on the written authorization of the attorney general. All other instances of wiretapping, whether the information was divulged or not, would remain illegal.<sup>180</sup> While the attorney general tried to convince Congress that authorized and controlled wiretapping was necessary to fight modern crime, President Roosevelt had already envisioned such limitations and placed them into his secret order allowing for certain types of wiretaps.

Roosevelt had intended to limit his order to “persons suspected of subversive activities against the Government of the United States, including suspected spies” during the war years. In fact, however, Bureau officials went beyond Roosevelt’s limits in a number of cases.<sup>181</sup> This expansion had been possible as a result of Attorney General Jackson’s decision not to keep a detailed record of authorized wiretaps, despite Roosevelt’s requirement the attorney general be aware of all such taps in place.<sup>182</sup> The only record of such approval was retained by Hoover, ensuring that attorneys general would learn about ongoing taps only if briefed by the FBI. While Hoover spoke publicly about the abuses that wiretapping could cause, he relished the freedom inherent in this procedure to install wiretaps without, in every case, executive oversight.<sup>183</sup> And, because the taps were installed secretly, Congress was unaware of the extent or targets of FBI wiretaps. The Roosevelt Administration’s goal for legislative change was predicated on the need to exploit wiretapping evidence during court proceedings. The proposed legislation circumvented the normal process of court-ordered warrants, vesting the

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<sup>180</sup> Letter from Attorney General to Hatton W. Sumners, Chairman, Committee on the Judiciary, House of Representatives, 19 March 1941, Charles Fahy Papers: Box 36, Folder 7, FDR Library.

<sup>181</sup> Theoharis, “FBI Wiretapping: A Case Study in Bureaucratic Autonomy,” 105.

<sup>182</sup> Memorandum for the Confidential Files, 28 May 1940, Hoover OC Files.

<sup>183</sup> Department of Justice Press Release, 15 March 1940, Charles Fahy Papers, FDR Library.

attorney general with power. This procedure had the further advantage of limiting knowledge of the extent of Bureau wiretaps.<sup>184</sup> The issue—an ongoing controversy over legislation—involved the question whether taps had to be authorized by the courts, using search warrants, or subject only to the decision of the attorney general. By the Eisenhower administration, efforts to enact legislation to allow wiretaps in certain situations increased, spurred by the anti-communist climate of the era and a continued posed by a series of court rulings in the Judith Coplon case.

An employee in the Department of Justice's alien registration section, Judith Coplon was arrested on March 4, 1949. At the time, she was found to possess 28 FBI documents that she apparently intended to deliver to Valentin Gubitchev, a member of the Soviet Union's United Nations staff. Coplon was indicted and subsequently tried in both Washington, D.C. (for unauthorized possession of the documents) and in New York City (for attempting to transmit the documents to Gubitchev). During the Washington trial, Coplon's lawyers "demanded that the full texts of the twenty-eight documents found in her handbag at the time of her arrest...be introduced in evidence. Pressured by the FBI, the prosecution objected to this defense motion on 'national security grounds.'"<sup>185</sup> The judge overruled this objection, and the documents were introduced into evidence. While no national secrets were disclosed, the related documents confirmed the political nature of Bureau surveillance and the fact that wiretaps had been extensively used to gather information. Coplon's defense team then requested a hearing to determine whether Coplon herself had been tapped. While the judge in Coplon's Washington trial rejected this request, the New York judge did hold such a hearing, where it was learned Coplon's

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<sup>184</sup> For examples of methods used to obscure the existence of wiretaps, see Theoharis, "FBI Wiretapping: A Case Study in Bureaucratic Autonomy," 103-104.

<sup>185</sup> Theoharis, *Spying on Americans*, 100-101.

home and office phones had been tapped, as had her parent's home. These taps had been installed January 6, 1949 and had remained active for two months after her arrest, "thereby intercepting privileged conversations between Ms. Coplon and her attorneys."<sup>186</sup> This embarrassing moment led to active lobbying of Congress by the Justice Department to enact legislation that would allow wiretaps for internal security investigations.<sup>187</sup> It also led Bureau officials and members of Congress to avert any effort to ensure "an independent and searching inquiry into FBI illegality and violations of democratic processes." For example, when leaders of the National Lawyer's Guild, long-time critics of Bureau practices, responded to Coplon's allegations by demanding Truman examine the Bureau's "questionable investigative procedures," Bureau officials responded by working to include the Guild on the Attorney General's list of subversive organizations and pushed HUAC to investigate Guild members. Any Guild actions taken to further the investigation were met by stiff Bureau opposition.<sup>188</sup>

While FBI officials had succeeded in forestalling a possible congressional investigation into FBI wiretapping and surveillance practices, they remained committed to amending the 1934 Act. With Eisenhower's election in 1952 and heightened anti-communist politics, the opportunity for legalization seemed ripe. Indeed, the early 1950s witnessed a concerted lobbying effort by the Eisenhower administration to enact such legislation. Administration officials vigorously pressed for such legislation, and even invited key members of Congress to the White House for informal discussions.

<sup>186</sup> Ibid., 101.

<sup>187</sup> Ibid., 105.

<sup>188</sup> Percival R. Bailey, "The Case of the National Lawyers Guild, 1939-1958," in *Beyond the Hiss Case: The FBI, Congress, and the Cold War*, ed. Athan Theoharis (Philadelphia, Temple University Press, 1982): 163, 136, 141, 143. For example, Bureau officials contacted a senator's office when they learned the senator had been approached to introduce a resolution calling for an investigation of the Bureau. The senator assured Bureau officials no such resolution would be offered.

The first discussions in the Eisenhower administration about proposed wiretapping legalization began in the National Security Council. In November 1953, Attorney General Brownell told the Council that he was in the process of “drafting a law with regard to wire-tapping. [Brownell] pointed out that evidence obtained from wire-taps could not be used before a Grand Jury or in a Federal court.” The Department of Justice was crafting a law to allow such evidence to be used whenever authorized by the Attorney General to “continue tapping wires.” With “proper safeguards,” Brownell contended, “there would be considerable public support for such a new statute.” President Eisenhower asked Brownell why “American liberals were so violently opposed to such a statute.” Brownell responded that, while people knew wiretap evidence “was much more accurate,” many felt it was “dirty business” and an invasion of privacy. Restricting wiretapping to “espionage cases,” would lessen such objections. Some members of the Council did express reservations at the time unless permission had been obtained from a federal judge before wiretapped evidence could be used, Eisenhower “was inclined to pooh-pooh the objections of the civil liberties people” if wiretaps were restricted to espionage cases. To mollify some of the objections of Council members, Eisenhower suggested that permission to use wiretapped evidence be granted by a Supreme Court justice.<sup>189</sup> Throughout these private deliberations, Attorney General Brownell neglected to mention that the FBI was already installing wiretaps. Passage of such a law, however, would permit the use of the evidence obtained from such taps during court proceedings. The discussion of the wiretapping issue then moved to the Cabinet, where similar concerns about “civil liberties people” were not raised.

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<sup>189</sup> Discussion at the 172 Meeting of the National Security Council, 24 November 1953, DDE: Papers as POTUS, 1953-1961 (Ann Whitman File): National Security Council File, Box 5, Folder 2, Dwight D. Eisenhower Library, Abilene, Kansas. Hereafter, DDE Library.

During a meeting in December 1953, Attorney General Herbert Brownell briefed the Cabinet about “the need for legislation allowing wire tap evidence to be used in court for effective prosecution of disloyal people.” Cabinet members “made no objection...except that Congressional and public reaction be explored further.”<sup>190</sup> Brownell pointed out, however, that any attempt to effect real change in current practice would invariable draw the ire of those insistent on a warrant requirement. Brownell specifically noted that “any legislation on this subject would open up discussion which might lead to requiring court permission for initiating wire taps, and he asserted that the Justice Department would prefer no legislation at all rather than such a change.”<sup>191</sup> Brownell insisted that the permission for granting wiretaps must remain in his own hands, where it had resided since Roosevelt’s proclamation in 1940. In actuality, Roosevelt’s proclamation had ceded control over the extent and targets of wiretaps to FBI officials, as attorneys general had never instituted procedures to ensure that they, in fact, controlled FBI wiretapping practices and never maintained a definitive record of approved wiretaps or limited their duration. In the Department’s effort to limit the discussion of wiretaps to national security cases only, Department officials met with congressional leaders to discuss the importance of enacting the proper type of legislation.

Shortly after the Cabinet’s discussion of the wiretap issue, the White House invited congressional leaders to discuss needed legislation. President Eisenhower, at the time, recognized “the great responsibilities of Congress and the need for working closely with it,” and had initiated from the beginning of his administration “weekly meetings with Congressional leaders, who will be free to bring along opposition members as they

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<sup>190</sup> 15 December 1953 Cabinet Meeting, DDE: Papers as POTUS, 1953-1961 (Ann Whitman File): Cabinet Series, DDE Library.

<sup>191</sup> Ibid.

desire.”<sup>192</sup> At one such meeting, “it was agreed [by the White House and congressional leaders] that the legislation for use of wiretap material in evidence would be limited strictly to national security cases without entering into the matter of court approval for wiretapping in other types of cases.”<sup>193</sup> Some members of Congress were willing to give Brownell the control he desired in authorizing wiretaps during national security investigations. They even discussed ways to ensure the passage of such a law, telling the administration such legislation “might be referred more appropriately to the Interstate and Foreign Commerce Committee than the Judiciary Committee.”<sup>194</sup> This method was proposed since the Judiciary Committee would scrutinize any proposed legislation much more fully. This proposed effort to circumvent the Judiciary Committee never occurred, but the proposal confirmed willingness by congressional leadership to defer to the executive on this controversial matter. Earlier Congresses guarded their prerogative in this area much more jealously. The administration’s lobbying for wiretapping legalization precipitated a series of congressional hearings to discuss the matter. Nonetheless, despite the administration’s concerted efforts, Congress did not change wiretapping laws during Eisenhower’s administration. The difference between Congress’s and the White House’s (and FBI’s) position proved to be their position on who should issue wiretapping warrants. Members of Congress pushed for judicial warrants, while the White House and FBI felt those warrants were best left in the hands of the attorney general.

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<sup>192</sup> 23 January 1953 Cabinet Meeting, DDE: Papers as POTUS, 1953-1961 (Ann Whitman File): Cabinet Series, DDE Library.

<sup>193</sup> Memorandum for Mr. Dodge, 25 January 1954, DDE: Papers as POTUS, 1953-1961 (Ann Whitman File): Legislative Meeting Series, DDE Library.

<sup>194</sup> Memorandum for Mr. Dodge, 5 April 1954, DDE: Papers as POTUS, 1953-1961 (Ann Whitman File): Legislative Meeting Series, DDE Library.

The first such hearings were held before a subcommittee of the House Judiciary Committee in spring and summer 1953, chaired by Kenneth Keating of New York. Keating began the hearings by stating his desire to craft a law to allow “certain Federal agencies directly concerned with national security to acquire, intercept, and divulge telephone, telegraph, and radio messages under certain circumstances.”<sup>195</sup> Keating cited the Coplon trial as a “fiasco...to a large extent because [the 1934 Federal Communications Act] is so vague and unsatisfactory.” His bill, he argued, would correct this situation by allowing certain federal agencies to tap wires for national security reasons, while also requiring a federal judge’s order to initiate a tap and the attorney general’s permission to disclose information received from a tap.<sup>196</sup> These provisions would prevent “fishing expeditions” and Keating based it on a successful New York law. The suggested legislation, Keating claimed, would be confined to national security cases, and would protect individual rights and, at the same time, allow the government to fight “traitors, spies, and saboteurs.”<sup>197</sup> The subcommittee then discussed the several bills before it and listened to testimony from executive officials. The most important witness was Deputy Attorney General William Rogers.

When testifying before the subcommittee, taking the place of Attorney General Brownell, Rogers emphasized that the Department of Justice needed such a law in order to meet its internal security responsibilities. The decision to assign responsibility to authorize wiretaps to the attorney general was correct, Rogers argued, because “the Attorney General is the Cabinet officer primarily responsible for the protection of the

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<sup>195</sup> US Congress, House, *Wiretapping for National Security*, Hearings Before Subcommittee No. 3 of the House Judiciary Committee, 83rd Cong., 1st Sess. (Washington, D.C.: United States Government Printing Office, 1953), 4. Hereafter, *Wiretapping for National Security* House Hearings (1953).

<sup>196</sup> Ibid., 5.

<sup>197</sup> Ibid., 6.

national security.”<sup>198</sup> To leave the decision in the hands of the courts could lead to delays and “leaks.”<sup>199</sup> Bureau officials felt “no one Federal judge possesses sufficient information on the nation’s security upon which he can base a decision.” FBI Assistant Director D.M. Ladd argued that it was even more problematic that “there are some Federal judges to whom we would not desire to furnish confidential information from our files on security matters.”<sup>200</sup> Bureau officials prepared a memo listing derogatory information on eight federal judges for possible off-the-record use in discussions with members of Congress.<sup>201</sup> Hoover discussed the issue with Congressman Keating, questioning “the character of some of our Federal judges;...the subversive affiliations of some of our Federal Judges.... [Hoover] stated that all of this would certainly lead to a great danger as to the disclosure of this very necessarily confidential operation.” Hoover went further, arguing Congress could hold the attorney general more accountable than hundreds of federal judges, allowing its members greater opportunities to act in case of abuses.<sup>202</sup> According to Rogers, this potential could be avoided by vesting in the attorney general the authority to initiate wiretaps confined to national security cases. No action was taken on the proposed legislative changes in 1953. The next year, the Senate Judiciary Committee held hearings on similar legislation, with the same result. The Senate, once again, did not even vote on proposed legislation.

Chaired by Alexander Wiley of Wisconsin, a subcommittee of the Senate Judiciary Committee held hearings in April and May 1954 about the pending wiretapping

<sup>198</sup> Ibid., 28.

<sup>199</sup> Ibid.

<sup>200</sup> D.M. Ladd to Hoover, 19 May 1953, “Derogatory Data on Certain Federal Judges for Possible Use ‘Off the Record’ in connection with Proposed Wire Tapping Legislation,” FBI# 62-12114-2699.

<sup>201</sup> Ibid.

<sup>202</sup> L.B. Nichols to Tolson, 16 January 1954, “Proposed Wiretapping Legislation,” FBI# 62-12114-2756. For more information, see Alexander Charns, *Cloak and Gavel: FBI Wiretaps, Bugs, Informers, and the Supreme Court* (Urbana and Chicago: University of Illinois Press, 1992), 32-34.

legislation. The United States, Wiley argued, “must use every instrumentality which may be necessary in this age of the atomic bomb and the hydrogen bomb—and this age of the international Communist conspiracy—in order to be adequate in defending itself.”<sup>203</sup> Establishing a clear framework for wiretapping would protect the nation from these threats. The first witness to testify was Attorney General Brownell, who clarified the administration’s position on the various bills under consideration while simultaneously opening the door to questions about past usage of wiretaps.

Brownell stated it was “heartening to us in the Department [of Justice] how deeply concerned this subcommittee is over the shameful history of Communist espionage in our Government and in other segments of our society and the betrayal of our vital secrets.” Admitting this was no easy task, Brownell described past policies regarding wiretaps. “Every Attorney General over the last 20 years,” he testified, “has favored and authorized wiretapping by Federal officers in cases involving our national security. This policy adhered to by my predecessors has been taken with the full knowledge, consent and approval of Presidents Roosevelt and Truman.” Because of this, the laws under consideration would not give “the Attorney General of any other Governmental official any additional power to tap wires over and beyond that which has been exercised since 1941.”<sup>204</sup> As he had argued consistently, any invasion of privacy was “repugnant” to Americans. Nonetheless, protection of the nation’s security required “pull[ing] Federal prosecuting attorneys out of their straitjackets and permit them to use

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<sup>203</sup> US Congress, Senate, *Wiretapping for National Security*, Hearings Before a Subcommittee of the Committee on the Judiciary, United States Senate, 83rd Cong., 2nd Sess. (Washington, D.C.: United States Government Printing Office, 1954), 2. Hereafter, *Wiretapping for National Security* Senate Hearings (1954).

<sup>204</sup> Ibid., 8.

intercepted evidence in the trial of national security cases.”<sup>205</sup> Wiretapping’s reputation had been sullied by “private peepers,” he conceded, adding that lumping agencies like the FBI with these actions misrepresented reality. In fact, according to Brownell, “since 1941 [really 1940], when President Roosevelt first issued the Executive order granting this authority to the FBI to tap wires, during all of that time the FBI has never abused its wiretap authority. As a matter of fact, its record of known nonpartisan, nonpolitical, tireless, and efficient service over the years gives ample assurance to me at least that the innocent will not suffer in the process of the FBI’s alert protection of the Nation’s safety.”<sup>206</sup> The public had a legitimate concern about their privacy but could safely trust the FBI to carefully protect their civil liberties. Furthermore, leaving the decision to implement taps in the hands of the attorney general was necessary to avoid wasting time and keeping the nation safer. Once again, and despite the attorney general’s strong position favoring this legislation, Congress took no action. The most promising hearing in terms of the enactment of wiretapping legalization was held by the House in 1955. For the first time, FBI Director Hoover prepared a statement to be submitted to the committee, in which he detailed the history of Bureau wiretapping.

In March 1955, subcommittee 5 of the House Judiciary Committee convened a hearing to examine wiretapping practices and proposed legislation. In preparation for Hoover’s testimony, FBI Assistant Director A.H. Belmont prepared a detailed brief for the FBI Director. This brief contained answers to possible questions from the subcommittee and a collection of past statements by the Director and other officials of the

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<sup>205</sup> Ibid., 9.

<sup>206</sup> Ibid., 14.

Department of Justice about wiretapping.<sup>207</sup> Even though Hoover was never called to testify, the drafted statement clearly evidenced the Bureau's position. The brief said that Hoover had "never looked with enthusiasm on wire tapping. I do not like it and never have. But there are cases where it is necessary as an investigative technique."<sup>208</sup> In fact, in early 1940, then-Attorney General Robert Jackson announced to the public that the Bureau would "revert back to its pre-1931 regulations prohibiting wire tapping."<sup>209</sup> Roosevelt's 1940 order overturned established Bureau practice. Hoover, therefore, felt it necessary to insist "that if the practice was to be resumed, that it be on the authority of the Attorney General."<sup>210</sup> Despite the value of wiretaps in certain instances, the Bureau had only initiated an average of 269 taps per year from 1940 to 1955. These taps were terminated once they fulfilled their usefulness. As FBI Director, Hoover had personally ensured that established policies were strictly followed.<sup>211</sup> According to Hoover, "the greatest measure of protection of abuses can be insured by centering [authorization to wiretap] in the Attorney General." In his years as director, Hoover had never seen an abuse of power and this Cabinet member could be held more accountable "by the Chief Executive and the Congress...than when this authority is dispersed through some 250 judges."<sup>212</sup> Wiretapping was "an executive function which, if abused, can always be corrected by removed [sic] that authority."<sup>213</sup> The statement crystallized Hoover's opinion. The executive branch was the proper home for any decision to utilize wiretaps because that branch could move quickly and, at the same time, could easily overcome

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<sup>207</sup> A.H. Belmont to L.V. Boardman, 25 March 1955, Hoover OC Files.

<sup>208</sup> Statement of J. Edgar Hoover, Director, Federal Bureau of Investigation, Before the House Committee of the Judiciary, 26 March 1955, Hoover OC Files.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

abuses. Hoover also realized that, if oversight within the executive branch was lax, he had more freedom to act as he felt necessary. Judicial oversight or tightly restricted legislation would only hamper the FBI's ability to combat the forces of communism.

The postwar period brought about significant changes in the relationship between Congress and the Federal Bureau of Investigation. Unlike the post-WWI period, the Bureau's appropriations and powers remained high. FBI officials' success in establishing the reputation of the Bureau as a hard-working, nonpartisan, apolitical fact-finding bureau also limited the ability of Congress to monitor and influence Bureau operations. Key congressional leaders established close, often clandestine, relationships with the FBI and, in the process, profited by acquiring selectively leaked information gathered by the Bureau. The careers of many politicians, such as Senators Pat McCarran and Joseph McCarthy, blossomed because of their covert connections with the Bureau. The price of that relationship, however, was their acceptance of the condition of complete secrecy about the source of information. Committees like the House Un-American Activities Committee, the Senate Internal Security Subcommittee, and McCarthy's Committee on Government Operations, successfully exploited the willingness of Bureau officials to provide selective information to illuminate the communist conspiracy infecting American government. Once those committees compromised the sources of that information, however, Bureau officials saw to it that the flow stopped.

Beyond advancing the cause of anti-communism, Bureau officials sought new ways to influence congressional relations. By establishing a close relationship with the House Appropriations Committee, Bureau officials could monitor their own standing and that of competing agencies and departments. This long-standing connection proved

invaluable to Bureau officials, leading to ceremonial hearings about the FBI's ever-increasing budget. During the period, Congressmen avoided asking hard questions and even bragged about giving the FBI every penny it requested. Bureau officials also sought opportunities to cover up embarrassing moments through congressional legislation. In the wake of the Coplon trial, executive branch officials unsuccessfully sought new laws to protect what they maintained was national security. Failing to obtain such laws, Attorney General Brownell's testimony and Hoover's prepared remarks reflect their preference that protecting the nation's security rightly belonged exclusively in the hands of the executive. Congress, it seemed, reacted too slowly to events.

By 1956, the relationship between Bureau officials and many of the congressional committees they had used to further the Red Scare during the years 1947-1955 faded. Bureau officials soon devised new ways to combat the menace of communism and members of Congress willingly neglected their oversight responsibilities. Occasionally, some members of Congress sought further insight into the actions of the Bureau. On those occasions, Bureau officials used their influence throughout the government to stall or undermine proposed investigations. Not until the Watergate scandal did congressmen seek to investigate Bureau actions, more confident in their powers and less fearful of a Hoover-less Bureau.

## **Chapter 5**

### **Bureau Autonomy Questioned: 1956-1975**

Beginning in 1956, Bureau officials altered their relationship with Congress. This coincided with the increasing executive power seen throughout the government. While Bureau officials still supported their congressional allies, for example, in the spirited defense of the House Un-American Activities Committee in response to public calls for its destruction, most of the Bureau's efforts shifted to more secretive programs initiated without congressional (or executive) approval. With programs like COINTELPRO, FBI officials sought to disrupt the Communist Party directly. Emboldened by Congress's passivity, FBI officials acted independently, either to disrupt targeted radical organizations on their own or leak information to reliable reporters and columnists. Like-minded congressional committees were no longer central to the goal of FBI officials in educating the American public about the dangers facing the nation.

While the powers of the presidency and of U.S. intelligence agencies certainly increased during this era, Congress did not completely ignore its oversight responsibilities. Members of Congress worked to overturn the federal prohibition on wiretapping in the late 1960s. With the Omnibus Crime Control and Safe Streets Act of 1968, specific exemptions allowed presidents to initiate wiretapping in “national security” cases without clearly delineating what constituted “national security.” Members of Congress debated the need for wiretapping, eventually deciding it was needed to combat organized crime. While some members urged their colleagues to continue the ban on taps, they were overruled by those who pushed for increased “law and order.”

On rare occasions investigations into Bureau practices were considered. In response, FBI officials used their influence over presidential administrations and like-minded congressmen to divert attention from what they privately recognized to be questionable, even illegal, FBI operations. In short order, proposed investigations either stopped or avoided assessing the Bureau altogether. The ability of FBI officials to determine how potentially damaging investigations might be relied on a few key elements. During the height of the Cold War years, the executive branch dominated national security policy and investigations into that policy were aborted when executive branch officials refused to cooperate. More important, members of Congress hesitated to attack the still-popular Bureau, fearing that by doing so their political careers would be harmed. The general public, moreover, overwhelmingly supported Bureau actions at the time, partly because the full extent of the Bureau's abusive activities was yet unknown. Congressmen also feared the disapproval of senior Bureau officials, with many believing (correctly) that Bureau resources could be used to uncover their own personal or political indiscretions. In those rare occasions when a congressional inquiry entered areas that Bureau officials found to be sensitive, congressmen were approached with reports that the Bureau had received information that could be detrimental to their chances for reelection. Only when public opinion and executive power began to wane in the 1970s did members of Congress fully reassert their oversight responsibilities.

With J. Edgar Hoover's death in May 1972 and the explosion of the Watergate crisis in 1973, cracks in the consensus politics that had dominated post-war American opened. The public no longer blindly trusted government officials, and they especially questioned the executive branch's efforts to exploit national security concerns. The

turbulent protests of the mid- to late-1960s helped perpetrate and legitimate public demands for accountability from their elected officials. Leading members of Congress tapped into the changed politics that this splintering created and launched unprecedented investigations into the executive branch. In the wake of the Watergate scandal and attendant discoveries of FBI abuses of power, separate House and Senate committees were established in 1975 to investigate the nation's intelligence agencies. The death of Director Hoover in 1972, combined with a reinvigorated public clamoring for change, created an opportunity for members of Congress to reassert their oversight role and even enact meaningful reforms without worrying that such actions could affect their chances for reelection. Indeed, the Church and Pike Committees investigation fundamentally changed the relationship between the FBI and Congress. Critical oversight became the norm, at least for a time. Congressional committees examined Hoover's legacy and attempted to pierce the veil of his administration by opening his secret files to public examination. Many of those files were destroyed after Hoover's death by his assistant, Helen Gandy, but merely acknowledging their existence led to greater congressional oversight. Calls for increased executive power to ensure national security were questioned. FBI officials could no longer regain the unblemished reputation they had enjoyed previously.

These changes marked a shift from the FBI-Congress relationship of 1956. In July of that year, Bureau officials established a formal liaison program with HUAC, modeled on the one forged in 1951 with SISS. This relationship remained uneasy, with Bureau assistance to the Committee varying according to "Hoover's reaction to committee initiatives." For a time, the FBI-HUAC relationship was much smoother as senior Bureau

officials Louis Nichols and then Cartha DeLoach worked closely and personally with the Committee's counsel. Under this arrangement, the Bureau provided information from its files on prospective Committee witnesses, names of financial contributors to the Communist Party, and advice on how the Committee should conduct future hearings. Bureau officials even edited the Committee's reports.<sup>1</sup> Because both parties were committed to furthering the anti-communist cause, any action that threatened to undermine this mission was immediately addressed. As early as 1957, when the Emergency Civil Liberties Committee (ECLC) mounted a campaign to "cripple the antisubversive programs of the Congress, to shackle or abolish the Committee on Un-American Activities, and to discredit J. Edgar Hoover and the Federal Bureau of Investigation," both Committee members and Bureau officials defended the Committee's controversial methods at every turn.<sup>2</sup> In its report about the Emergency Civil Liberties Committee's activities, for example, HUAC gave detailed background information on each of the key members—information provided in confidence by the FBI. The ECLC's director, Clark Foreman, for example, was listed as "a leader in a number of pro-Communist organizations. His positions have included that of founder and president of the Southern Conference for Human Welfare; director of the National Council of the Arts, Sciences, and Professions; vice chairman of the Washington Committee to Win the Peace; and vice president of the Progressive Citizens of America."<sup>3</sup> Much of this information was publicly available, but the Committee profited by its indirect access to

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<sup>1</sup> Theoharis and Cox, 320-321.

<sup>2</sup> US Congress, House, "*Operation Abolition*": *The Campaign against the House Committee on Un-American Activities, the Federal Bureau of Investigation, the Government Security Program by the Emergency Civil Liberties Committee and its Affiliates* (Washington, D.C.: United States Government Printing Office, 1957), 1. Hereafter, "*Operation Abolition*."

<sup>3</sup> Ibid., 4.

the contents of Foreman's FBI file. The solid working relationship enabled HUAC staff and members to obtain Bureau information on the members of the ECLC. That information could then be used to discredit that organization. HUAC members were also able to stymie an even greater attempt to demolish HUAC in 1960 through their access to Bureau assistance. As Bureau Assistant Director Fred Baumgardner privately worried, "Should the communists be successful in having [HUAC] abolished, it is believed the next direct target would be the FBI. Therefore, [HUAC], in addition to carrying out its objective of exposing communists, is actually a buffer target between the communists and the FBI."<sup>4</sup> This sense of a common enemy and shared ideology meant that both Committee members and FBI officials viewed any attempt at abolishing one as a threat to the other. The gravest threat to HUAC came in 1960, with the formation of the National Committee to Abolish HUAC formed with the "sole purpose...to abolish the Committee on Un-American Activities."<sup>5</sup>

In an attempt to reenergize the Committee, Congressman Francis Walter began holding hearings exposing Communists throughout the country. In May 1960, he convened hearings in San Francisco, where the Committee encountered large protests led by students from the University of California-Berkeley. It was, as the Special Agent in Charge of the Bureau's San Francisco office told Hoover, "a riotous, holiday atmosphere for communists and their sympathizers" and probably the "most successful CP inspired demonstration since the bloody 1934 waterfront strike."<sup>6</sup> The students involved, the SAC reported, proved that "so-called academic freedom has become academic license" where attacking the FBI was "one example of the deterioration of the morality and patriotism at

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<sup>4</sup> Quoted in O'Reilly, 259.

<sup>5</sup> Ibid.

<sup>6</sup> SAC, San Francisco to Hoover, 12 May 1960, FBI# 61-7582-4492.

[the University of California-Berkeley].”<sup>7</sup> Responding to this report, Hoover ordered FBI agents to ensure “coverage of activities in schools and colleges as the trend seems to be not only in US but elsewhere to inflame youth.”<sup>8</sup> And, to educate the population about this threat, Hoover directed FBI Assistant Director Cartha DeLoach to “try and get a ‘round up’ leading to recent S.F. debacle thru some news contact.”<sup>9</sup> Hoover specifically sought information that could be used to paint the demonstration as the brainchild of the Communist Party. The San Francisco office fulfilled his request, submitting its report on June 3, 1960. This report outlined the steps taken by the Communist Party to prepare for HUAC’s hearings, the part played by the Party during the demonstration, and the subversive connections of those arrested.<sup>10</sup>

In his report about the demonstrations, SAC Auerbach claimed that the Communist Party began preparations for a demonstration in early May, as HUAC’s hearings would “distract attention from planned ‘peace’ demonstrations to be held the weekend after the scheduled hearings.” Instead of controlling the protest, the Communist Party’s leaders merely set the parameters. The CP provided the signs but did not put their leaders in position to get arrested. Their only active participation, it was reported, was “distributing leaflets among the group” and providing transportation from Berkeley to San Francisco. The party, it seemed, did “take advantage of a situation and turn it to its own ends.” Auerback recommended that Hoover consider “preparation of this material in such form that Mr. DeLoach can make it available to one of his [media] contacts.” FBI Associate Director Clyde Tolson added that Bureau officials should “prepare the material

<sup>7</sup> SAC Auerbach to Hoover, 13 May 1960, FBI# 61-7582-NR.

<sup>8</sup> Ibid.

<sup>9</sup> Baumgardner to Belmont, 18 May 1960, FBI File# 51-7582-NR.

<sup>10</sup> Baumgardner to Belmont, 3 June 1960, FBI File# 61-7582-4530.

in such form that it could be published by a Congressional Committee.”<sup>11</sup> By mid-July, Bureau officials had created this proposed report, which was then publicly issued by the House Un-American Activities Committee, and sent to each Bureau field agency and “twenty selected press friends.”<sup>12</sup> Bureau officials also supported HUAC’s production of a film, entitled *Operation: Abolition* about the events in San Francisco and purporting to prove the demonstration was a Communist Party plot to abolish HUAC.<sup>13</sup> FBI support of HUAC, highlighted by the assistance during the San Francisco demonstration, illustrated “an enduring commitment to Cold War values—a commitment to the anti-communist consensus that the Bureau and the Committee had nurtured for nearly 30 years.” By the 1960s, however, the anticommunist consensus faltered. Nevertheless, FBI officials responded by “radically expanding its counterintelligence and other political activities.”<sup>14</sup> A consistent tactic employed by Bureau officials, one adopted over more than a decade, was to bully potential critics in Congress by exploiting the files that the FBI had compiled and maintained from long-standing surveillance of members of Congress. Fearful that accessible files on each member of Congress might have made them vulnerable to criticism that they were monitoring members of Congress, Bureau officials “soon devised a system enabling them to keep such records without risk of discovery.” This system, begun in the 1950s, began with a “systematic review” of all information in Bureau central records about candidates seeking election to Congress. Any information forwarded by field offices to Washington would supplement the central records file and a

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<sup>11</sup> Ibid.

<sup>12</sup> Redacted to Mr. DeLoach, 15 July 1960, FBI File# 61-7582-4538; W.C. Sullivan to A.H. Belmont, 8 August 1960, FBI File# 61-7582-4573X.

<sup>13</sup> For letters received by the Bureau about *Operation: Abolition*, see FBI# 61-7582-4746 through 61-7582-4870 and 61-7582-4936 to 61-7582-5061.

<sup>14</sup> O'Reilly, 281.

“summary memorandum” was produced on each candidate. Any submission from the field came “by routing slip, not letter...in sealed envelopes,” ensuring no official record would be created. If Bureau officials were ever asked if they maintained records on members of Congress, they could deny any such records existed—these records were not maintained in the Bureau’s central filing system. Instead, they were kept separately in the FBI’s Administrative Review Unit. If pressed about “dossiers” on members of Congress, Bureau officials could legitimately deny that such dossiers existed. Even more important, Bureau officials could deny that surveillance of Congressional candidates had begun when they were private citizens.<sup>15</sup>

A series of Supreme Court ruling in the mid-1950s narrowed prosecutive options in cases against suspected communists. More important, the Supreme Court’s 1957 decision in *Jencks v. United States* found that “defense attorneys had the right to obtain the pretrial statements that government witnesses had made to the FBI—a ruling that would breach the confidentiality of FBI files should the Justice Department produce FBI informers as witnesses in trials of indicted Communist activists.”<sup>16</sup> Even more threatening was the chance that information obtained illegally, through methods such as wiretaps or bugs, was also required to be sent to defense attorneys. For decades, Bureau officials had refused access to raw information contained in Bureau files. They much preferred giving selected portions of those files, cleansed of any reference to the methods used to obtain information, to those members of Congress or the press Bureau officials deemed trustworthy. To allow unrestricted access to the files would undermine the Bureau’s carefully crafted image as an apolitical, investigatory agency. Such access could

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<sup>15</sup> For more information about summary memoranda, see Athan Theoharis, *The FBI and American Democracy: A Brief Critical History* (Lawrence: University Press of Kansas, 2004), 113-114.

<sup>16</sup> Theoharis, *The FBI and American Democracy: A Brief Critical History*, 120.

have also brought Bureau officials' illegal wiretapping and bugging programs greater scrutiny.

Nonetheless, by the mid-1960s, FBI officials found it more difficult to conceal the Bureau's wiretapping and bugging operations. In July 1965, Senator Edward Long, a Democrat from Missouri, "launched a crusade against government eavesdropping" aimed, initially, at the Internal Revenue Service.<sup>17</sup> In the course of this investigation of the IRS's practices, the Long Subcommittee expanded its inquiry to cover all federal intelligence agencies. The first step in this expansion was to send each agency a questionnaire demanding information about its surveillance practices. This questionnaire, unbeknownst to Long and his subcommittee, would have required FBI officials, if they answered this questionnaire truthfully, to reveal the "broad scope and political nature of the Bureau's surveillance practices."<sup>18</sup> To prevent this potentially damaging development, Hoover asked Attorney General Nicholas Katzenbach to intercede with the chair of the Senate Judiciary Committee, Senator James Eastland, and have him warn Senator Long that the subcommittee's council "must not go into the kind of questioning" that could embarrass the Bureau. Senator Eastland "thoroughly" understood the matter and agreed to make sure that the Bureau's activities would not be publicly exposed.<sup>19</sup> After meeting with Senator Long, Katzenbach advised Hoover that Long would avoid any "national security area" and would inform the attorney general whenever any former FBI agent was scheduled to testify. Katzenbach promised to "personally and

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<sup>17</sup> Theoharis and Cox, 361-362. Theoharis has written most extensively about Long's efforts. See also *Spying on Americans*: 112-113 and Athan Theoharis and Kenneth O'Reilly, "The FBI, the Congress, and McCarthyism," in *Beyond the Hiss Case: The FBI, Congress, and the Cold War* ed. by Athan Theoharis (Philadelphia: Temple University Press, 1982), 390-394

<sup>18</sup> Theoharis and Cox, 362.

<sup>19</sup> Memo from Hoover to Tolson, Belmont, Gale, Rosen, Sullivan, DeLoach, 1 March 1965, Clyde A. Tolson Papers.

confidentially” review the scheduled witnesses. In the event that former FBI agents would be questioned about national security investigations, Katzenbach would ensure that they would not testify. Hoover also took the opportunity to tell the Attorney General that wiretapping by all agencies should be limited to those taps approved by the attorney general. If the attorney general kept the list of all wiretaps, then “if any committee in Congress got on the warpath, the Attorney General would have a list he could vouch for as being the only phones tapped by the Government.” Conceding that many agencies’ officials might oppose this procedure because there would be a “marked restriction” on wiretaps, Hoover felt it would create a definitive list. Katzenbach then admitted that “no one has any idea how many phone taps the Government has.” Hoover reiterated his “lack of faith and confidence” in the willingness of Long Subcommittee counsel Fensterwald to clear prospective witnesses with Katzenbach. Trying to calm Hoover, Katzenbach told him that someone (either Vice President Humphrey or Senator Eastland) had “waked [Long] up.”<sup>20</sup> Katzenbach had been invited to testify before the subcommittee and Hoover told him that Senator Eastland had “assured [the Bureau] that Senator Long would not raise any questions about the FBI’s operations in the matter of technical surveillance and electronic devices.”<sup>21</sup> Based this assurance, Katzenbach felt confident about testifying, believing the subcommittee would not ask about FBI wiretapping or bugging.

That confidence, however, proved to be misplaced. During his questioning of the attorney general, Fensterwald “did go into the matter of technical installations by the FBI.” Katzenbach, who claimed to be ignorant of all the facts, “agreed to supply certain

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

information” to the subcommittee. Accordingly, Hoover ordered his aides to prepare a memorandum answering Fensterwald’s questions, but noted that “obviously, Senator Long did not keep his promise to Senator Eastland” to avoid discussing FBI electronic surveillance.<sup>22</sup> Believing Senator Long could not be trusted, Hoover ordered his aides to monitor the subcommittee.<sup>23</sup> He also contacted Long personally, after which he reported to the attorney general that Long promised not to “call anyone from the Department in connection with the hearings he has gone into.” Both Katzenbach and Hoover agreed to “keep watch on the situation.”<sup>24</sup>

The subcommittee, however, kept returning to the FBI’s wiretapping and bugging operations, especially because “the press gave great play to reports of FBI wiretapping.” Long felt pressured “to look into the FBI’s activities in connection with the usage of electronic devices.” Skilled at dealing with public relations problems, Cartha DeLoach, in a meeting with Long, urged the chairman to issue a statement that he had met with top Bureau officials and was convinced they never used wiretaps or electronic bugs in an uncontrolled manner. Long, however, pleaded unable to properly word such a release, and, accordingly, DeLoach offered to prepare the release for him. Long, however, could not issue such a statement, fearing that the subcommittee’s staff would challenge such assertions. DeLoach, therefore, met one more time with Long and Fensterwald. At this meeting, Long committed to avoid embarrassing the Bureau, but Fensterwald wanted a top Bureau official to appear before the committee and essentially testify that the Bureau had only used wiretaps in national security and kidnapping cases and microphones only

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<sup>22</sup> Ibid.

<sup>23</sup> Theoharis and Cox, 365.

<sup>24</sup> Hoover to Tolson, Belmont, Mohr, DeLoach, Gale, Rosen, Sullivan, 24 August 1965, Clyde A. Tolson Papers,

in cases of heinous crimes. Bureau officials, however, could not testify to this under oath (because it was untrue), and Long continued to promise not to call Bureau witnesses.

Fensterwald eventually agreed not to insist upon FBI testimony. Apprising Hoover of this meeting, DeLoach contended, "While we have neutralized the threat of being embarrassed by the Long subcommittee we have not yet eliminated certain dangers which might be created as a result of newspaper pressure on Long. We therefore must keep on top of this situation at all times." In response, Hoover took two precautions. He ordered his aides to prepare a "summary of information" on each member of the Long Subcommittee and on Fensterwald. Second, he prepared a statement for use in case he was required to testify before the subcommittee.<sup>25</sup>

When summarizing the Bureau's information on the members of Long's subcommittee, Hoover's aides noted that all of the senators had made positive remarks about the Bureau in the past. Senator Birch Bayh, for example, was "a neighbor of Assistant Director William S. Tavel and, according to Mr. Tavel, has always evidenced a friendly attitude toward the Bureau." On the other hand, Senator Quentin Burdick had "made some complimentary remarks on the Senate floor in May 1964," but there were also "numerous references in Bureau files indicating that he has been a communist sympathizer for some two decades before that." The summary then stated that Burdick had subscribed to communist publications in 1944 and that the Bureau had received information in 1945 and 1958 that Burdick followed the communist party line. In each of these instances, the source of the information was redacted from the released Bureau

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<sup>25</sup> Theoharis and Cox, 365-367. Quote found on page 367.

file.<sup>26</sup> Hoover thoroughly researched his potential adversary and prepared testimony to defend his Bureau's wiretapping and microphone surveillance practices. His draft testimony "implied that eavesdropping techniques had always been both tightly controlled and conducted only with the specific knowledge and authorization of the attorney general and the president."<sup>27</sup>

FBI officials, however, soon encountered a further threat to their efforts to defend FBI wiretapping and bugging practices. The occasion was a 1966 Supreme Court ruling in the case *Black v. U.S.* Hoover might have succeeded in forestalling the Long Subcommittee's inquiry, largely through his own efforts, but he confronted a more serious problem in the Black case. This case, ironically, led to careful maneuvering to ensure that Long remained committed not to investigate Bureau surveillance activities.

An influential Washington lobbyist who represented several Las Vegas businessmen, Fred B. Black was convicted in May 1964 of income tax evasion. In 1966, Black petitioned the Supreme Court for a rehearing "based on information that the FBI had bugged his Washington hotel room." The solicitor general responded during the resultant hearing that Black's room had been bugged "during an unrelated criminal matter." The Supreme Court thereupon ordered the Justice Department to submit a brief explaining the legal authority for that bug.<sup>28</sup> This requirement precipitated a fierce debate within the Justice Department over FBI bugging practices. As part of his strategy to pressure the Attorney General to defend FBI officials, Hoover ironically used the threat of a Long Subcommittee investigation in an effort to push Attorney General Katzenbach

<sup>26</sup> The Long Committee: Possible Testimony, U.S. Senate Committee on the Judiciary, Subcommittee on Administrative Practices and Procedures, 21 December 1965-10 January 1967, Hoover OC Files.

<sup>27</sup> Theoharis and Cox, 367.

<sup>28</sup> Ibid., 368. The Black case is covered in greater detail on pages 368-395.

to defend the FBI's actions. Hoover's effort to push Katzenbach, however, failed in its overall purpose as the Justice Department's response to the Supreme Court cited only a long-term practice without conceding that Justice Department officials had authorized the bugging of Black.<sup>29</sup>

FBI officials' threat of providing information to the Long Subcommittee captured both the extent of their independence and the willingness of leading congressmen to unqualifiedly defend their actions. At a time when Department officials were considering what to tell the Supreme Court about the bug in Black's hotel room, Hoover "confidentially" informed Long that the bug had been placed in Black's room "because of his association with Edward Levinson and Benjamin Siegelbaum, who were deeply involved in the skimming of funds out of Las Vegas casinos. It was pointed out to Senator Long that these funds were funneled through Myer Lansky, in Florida, and Gerrado Catina, acting Commission member, La Cosa Nostra, in Northern New Jersey." Installation of the bug was justified, according to Hoover, because the Bureau was concerned about Black's potential role in organized crime. He pointed out that once it was determined that Black had no involvement with actual crime, the bug had been removed.<sup>30</sup> Hoover also told Long that Justice Department officials had known of the bug since August 1965, no matter what they told the Supreme Court. Long responded that this information "was a most unfortunate development in that columnists like Drew Pearson, Fred Graham of the New York Times, and Dave Kraslow of the Los Angeles Times, together with liberals on his committee, and the anti-FBI groups, would again raise hue and cry for the Long Committee to hold hearings on the FBI." He had avoided such

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<sup>29</sup> Ibid., 392.

<sup>30</sup> Gale to DeLoach, 23 May 1966, Hoover OC Files.

hearings in the past by claiming that the Bureau had only used such surveillance methods “in organized crime and security cases. He stated he recognized this case on Black potentially involved organized crime, but it would be difficult to get this over to the public.”<sup>31</sup> Long concluded by thanking Hoover for the advance warning, as “some reporters could have really caught him off guard.”<sup>32</sup> Hoover was thus assured of Long’s loyalty.<sup>33</sup>

One month later, Hoover again contacted Senator Long, who said he put Attorney General Katzenbach “on notice that the Attorney General’s reply to the Supreme Court concerning the microphone in the Black case had better be absolutely truthful and factual or hearings would be held.”<sup>34</sup> In that letter, Long stressed that his interest in the Black matter hinged upon the “considerable interest” of the press. Because his subcommittee was charged with “investigating eavesdropping and invasion of privacy by federal agencies,” he wanted to be sure “no deliberate attempt will be made for anyone to shield or defend any parties in this controversy.”<sup>35</sup> Long had not, at the time, definitely scheduled any hearings, but emphasized that his subcommittee would certainly carefully read the Department’s response to the Supreme Court. His letter concluded that he looked forward to meeting with Katzenbach “about the hearing at some later date.”<sup>36</sup> In response, Katzenbach told the senator he “would...be pleased to discuss the matter with you.”<sup>37</sup>

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Theoharis and Cox, 390.

<sup>34</sup> DeLoach to Tolson, 22 June 1966, Hoover OC Files.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Attorney General Katzenbach to Senator Long, 23 June 1966, Hoover OC Files.

By chance, Senator Long met Katzenbach at a White House bill-signing ceremony before sending his letter advising the attorney general “of his interest in the Black case and admitted to having already written him about the matter.”<sup>38</sup> Long reported this meeting to Bureau Deputy Associate Director Cartha DeLoach. According to Long, unless the Department’s reply to the Supreme Court “was handled in a proper manner, [Long] felt that it might be necessary to call both the Director and the Attorney General for public hearings.” The attorney general responded, “Oh my God! Not that! Let’s don’t bring all this stuff out.” Long then promised to hold off any action until he read the Department’s reply to the Supreme Court. Confiding to DeLoach that he “had no intention whatsoever of calling the Director or the Attorney General.” The conversation and the letter would put “the fear of God” into Katzenbach, forcing the Department’s response to treat the Director carefully. Of course, Long would also “follow this matter closely.”<sup>39</sup> Katzenbach remained unwilling to accede to Hoover’s demands; this highlights the nature of FBI-Congress relationship—one in which members of Congress did not exercise their oversight power. FBI officials’ ability to avoid hearings included both having the attorney general intercede to avoid FBI testimony and, in a stunning reversal, having members of Congress threaten to hold hearings that could embarrass the Justice Department. Instead of using his subcommittee as a check on some of the Bureau’s abusive practices, Senator Long willingly became a useful tool to protect Hoover’s, and the Bureau’s, images. FBI officials’ ability to rely on such deference proved to be a key factor in sustaining an image of an apolitical, highly disciplined agency. It also promoted Hoover’s image as one of the most popular figures in American

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<sup>38</sup> Theoharis and Cox, 390.

<sup>39</sup> DeLoach to Tolson, 22 June 1966, Hoover OC Files.

political life until his death in May 1972. In the wake of his death, and the Watergate scandal a year later, the apolitical, professional image Hoover worked so hard to craft crumbled. Much of the work to expose the Bureau's practices was done by congressional committees who no longer feared retribution from the very bureaucrats they had supported for so long.

Wiretapping legislation also offers an important case study of the changing nature of Congress's relationship with the FBI during this period. Since 1934, wiretapping had been banned by law. With Supreme Court decisions in 1937 and 1939, that ban had applied to private citizens and law enforcement officials alike. While members of Congress attempted to overturn these restrictions almost immediately, no legislation had passed. Meanwhile, through secret presidential directives and Bureau officials' decisions, the FBI had unilaterally used wiretaps for political investigations. Many of these taps were unknown to anyone outside the Bureau leadership, including the supposed superior of those officials, the attorney general. By the late 1960s, members of Congress again brought wiretapping legislation to the floor. This time, however, with fears of an organized crime wave pushing them, members of Congress successfully passed legislation to allow wiretapping in certain instances with court approval. In part, the bill, the Omnibus Crime Control and Safe Streets Act of 1968 (OCCSS), allowed FBI agents to use wiretapped evidence in court if a court had approved those taps beforehand. Just as important, however, the bill carved out an exception for required court approval, allowing the President to call for wiretaps in "national security" cases. This provision caused the greatest debate, both in committee hearings and on the floor of the Senate. Fears that the language was too vague and allowed the president too much discretion to define "national

security” instances were discarded in favor of some members’ views that Congress needed to act to protect the nation from increasing criminal activity.

Opening the Senate Judiciary Committee’s hearings into the OCCSS, Chairman John McClellan of Arkansas told his colleagues that the committee would “have to give serious and constant study to the difficulties that confront us in trying to find ways, methods, and the means legislatively speaking to bring about a reduction in crime.”<sup>40</sup> Senate Bill 675 would also “prohibit wiretapping except on authority of the President to protect the Nation from attack or hostile action by foreign powers, and except in investigations of organized crime, and certain specified heinous crimes, under court order and after a finding of probable cause.”<sup>41</sup> McClellan went on to argue that he felt, under certain circumstances, “that we can trust our courts and police commissioners...and district attorneys who are under oath and who are dedicated to law enforcement, to handle a tool, an instrumentality like [wiretapping], without being fearful of abuse of this authority.”<sup>42</sup> Similarly, a judge from New York argued that, under S. 675, wiretapping would be “no more an unreasonable search and seizure in violation of the fourth amendment than is a search warrant.”<sup>43</sup>

At the same time, however, there were members of, and witnesses before, the committee who were uncomfortable with the proposed wiretapping legislation. According to Attorney General Ramsey Clark, S. 675 would rectify the current

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<sup>40</sup> United States Congress, Senate, *Controlling Crime through More Effective Law Enforcement*. Hearings before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, United States Senate, Ninetieth Congress, First Session on S. 300, S. 552, S. 580, S. 674, S. 675, S. 678, S. 798, S. 824, S. 916, S. 917, S. 992, S. 1007, S. 1094, S. 1194, S. 1333 and S. 2050, Bills Relating to Crime Syndicates, Wire Tapping, Admissibility in Evidence of Confessions, Assisting State and Local Governments in Combating Crime and Related Areas of Criminal Laws and Procedures (Washington, D.C.: United States Government Printing Office, 1967), 1. Hereafter, *Controlling Crime Hearings*.

<sup>41</sup> *Ibid.*, 2.

<sup>42</sup> *Ibid.*, 820.

<sup>43</sup> *Ibid.*, 176.

“unsatisfactory” condition of wiretapping laws, but it did not go far enough. Instead, he felt wiretapping should “be allowed only in national security matters, with a total restriction imposed in all other areas.”<sup>44</sup> “The needs of law enforcement,” Clark wrote to the committee, “can be met without reliance on such large-scale intrusions on personal privacy. At the very least, proponents of judicially authorized wiretapping have a heavy burden of proof to meet to justify such intrusions, a burden which has not been met.”<sup>45</sup> Only in cases where the very nation was at stake, argued Clark, would wiretapping of any kind be justified. In a similar vein, in his remarks about S. 675, Senator Ervin commented that he was leery of the exception regarding organized crime but would withhold judgment until law enforcement officials testified about its necessity.<sup>46</sup> While neither of these men argued wiretapping should not be part of the bill, both held reservations about the vagueness of the proposed legislation. The debate would continue on the floor of the Senate, with Senator McClellan defending the bill against its opponents, especially Senators Hart of Michigan and Long of Missouri.

On the Senate floor, Senator McClellan argued that the purpose of the new wiretapping legislation was to protect “the privacy of wire and oral communications” while simultaneously “delineating on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized.” The proposed legislation would bar “all wiretapping and electronic surveillance by all persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified types of serious crimes, and only after authorization of a court order obtained after a showing of probable cause.” There would only be two exceptions.

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<sup>44</sup> Ibid., 82.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., 5-6.

The first protected “the power of the President to obtain information by such means as he may deem necessary to protect the Nation from attack or hostile acts of a foreign power, to obtain intelligence information essential to the Nation’s security.” The second would allow the President “to protect the internal security of the United States from those who advocate its overthrow by force or other unlawful means.”<sup>47</sup> McClellan assured his colleagues that, in drafting the legislation, “we have been most careful to include every possible constitutional safeguard for the rights of individual privacy.” At the same time, however, law enforcement officials needed this legislation in order to combat the crime wave afflicting the nation. The legislation had the Department of Justice’s endorsement, McClellan said, because “this character of evidence and this method of attaining evidence of crime is necessary, that it is essential, and that it is indispensable with respect to maintaining our national security.” Only the President, he concluded, could tap wires without a court order, protecting constitutional liberties while allowing for effective law enforcement.<sup>48</sup> To many of McClellan’s colleagues in the Senate, this provision allowed for an overzealous President to overstep and place taps on the phones of not just those who might threaten the nation’s security, but also the phones of political opponents.

Several senators came to the floor to argue that the wiretapping provisions of this law went too far toward invading individual rights. Senator Long, for instance, told his colleagues that it “would be unfortunate to enforce the criminal law on one hand and, at the same time, have our citizens lose their right to privacy. That would be the first step toward a police state.”<sup>49</sup> He argued that the argument that “this would be a big help” was flawed because similar arguments could be used to justify “the rack, the thumb-screw, the

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<sup>47</sup> *Congressional Record* v. 114 (90th Cong., 2nd Sess.), 14469.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, 14470.

rubber hose.” “Eavesdropping is still eavesdropping,” Long said, “and peeping tomism is still peeping tomism. Both are repugnant activities and hence the desire to cloak them in secrecy even though they would be court sanctioned under the proposed legislation. All of modern history’s dictators have employed these tools in their greater effectiveness—as psychological weapons.”<sup>50</sup> Long could not ignore wiretapping’s potential for abuse, in the hands of any government agency because it could be “so easily corrupted—if for no other reason than [it] is so effective in controlling public behavior. Spying on its citizens has always been one of the most effective tools of a totalitarian government.”<sup>51</sup> Senator Long, joined by his colleague Senator Hart, then spelled out the potential for abuse, arguing the proposed legislation gave the president vague, broad powers with little congressional oversight.

Senator Long’s biggest problem with the proposed legislation was its lack of a clear definition of the president’s powers. By granting an exception to wiretapping’s prohibition to the president for “national security” cases, Long saw potential for abuse. He told his colleagues that, although unlikely, “one President’s definition of national security could encompass a nationwide trucking strike or rail or airline strike. Under section 2511(3) the President, if he deemed such a strike a threat to national security, could without seeking court orders, place taps on both labor and management in the struck industry.”<sup>52</sup> Agreeing with Senator Long, Senator Hart said he was “bothered” by the phrase, “nothing in this bill shall limit the power of the President to take such measures as he deems necessary to protect the United States...against any other clear and present danger to the structure or existence of the Government.” According to Hart, this

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<sup>50</sup> Ibid., 14482.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., 14712.

broad language could allow the President to “declare—name your favorite poison—draft dodgers, Black Muslims, the Ku Klux Klan, or civil rights activists to be a clear and present danger to the structure and existence of the Government. If that is the case, section 2511(3) grants unlimited tapping and bugging authority to the President. And that means there will be bugging in areas that do not come within our traditional notions of national security.”<sup>53</sup> Senator McClellan defended the legislation, saying it was “approved and, in fact, drafted by the administration, the Justice Department.”<sup>54</sup> Hart concluded by arguing that “nothing in section 2511(3) even attempts to define the limits of the President’s national security power under present law, which I have always found extremely vague, especially in domestic security threats.”<sup>55</sup> Members of Congress debated the importance of this section of the proposed legislation, eventually passing the bill and allowing, for the first time since 1934, legal wiretaps after court orders. The vague exceptions to the president’s powers during national security threats remained in the bill, just as the administration desired. With the passage of this act, long-standing wiretapping policy used secretly by Bureau officials now had congressional sanction. Acting on presidential orders, or even independently, Bureau officials could tap wires and claim they were acting to protect the nation. An opportunity for congressional oversight disappeared.

By the early 1970s, the Cold War consensus that had ruled American foreign policy cracked. Members of Congress were no longer willing to defer to the executive branch to control every aspect of that policy, and, instead began pushing for a larger voice in the conduct of internal security policy. For example, in September 1971,

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<sup>53</sup> Ibid., 14750.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., 14751.

Congress repealed the emergency detention provision of the McCarran Internal Security Act of 1950. This posed a serious dilemma for Bureau officials, as it removed any congressional sanction of a preventive detention program. While Bureau officials argued that, even with repeal, the FBI still had a responsibility to protect national security, they concluded that the Justice Department should be consulted “to determine if there is any manner in which the essence of the Security Index and emergency detention of dangerous individuals could be utilized under Presidential powers.”<sup>56</sup> Attorney General John Mitchell responded that the Bureau’s authority to investigate subversive matters was unaffected by the repeal, and maintained that repeal “does not alter or limit the FBI’s authority and responsibility to record, file, and index information secured pursuant to its statutory and Presidential authority. An FBI administrative index compiled and maintained to assist the Bureau in making readily retrievable and available the results of its investigations into subversive activities and related matters is not prohibited by the repeal of the Emergency Detention Act.”<sup>57</sup> Instead of fulfilling the wishes of Congress, Hoover, with the attorney general’s consent, merely changed the name of the emergency detention index from Security Index to Administrative Index. By 1973, in the wake of the Watergate scandals, even this changed nomenclature was not enough. FBI Director Kelley ordered that the Administrative Index become only an “administrative device” and not play any part “in investigative decisions or policies.”<sup>58</sup> Soon thereafter, Bureau officials abolished the Administrative Index program. Justice Department and Bureau

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<sup>56</sup> U.S. Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Final Report, *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, Book III, 94th Cong., 2d sess., 1976, 542-543. Hereafter, *Supplementary Detailed Staff Reports*.

<sup>57</sup> U.S. Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Hearings on Intelligence Activities*, 94th Cong., 1st sess., 1975, vol. 6: Federal Bureau of Investigation, 658. Hereafter, *Hearings on Intelligence Activities*.

<sup>58</sup> *Supplementary Detailed Staff Reports*, 552.

officials had technically complied with a Congressional order, but only out of concern for public relations.<sup>59</sup> Congress soon began to investigate such Bureau activities, ushering in an era when the relationship between Congress and the FBI could have potentially changed. Instead, members of Congress neglected to pursue any long-lasting meaningful reforms, allowing Bureau officials to continue to determine the Bureau's actions for themselves.

Senator Frank Church and Congressman Otis Pike began hearings into the misconduct of America's intelligence agencies. These "extensive, year-long hearings...produced shocking accusations...of FBI corruption."<sup>60</sup> Congress launched wide-ranging investigations of the FBI (and the CIA and NSA) and, at the same time, undermined the ability of presidents to deny access to highly classified records. During the 1950s and 1960s, "presidents and intelligence bureaucrats would...have refused to give congressional investigators access to the classified files" needed to fully investigate the FBI. Without access to those files, the true depth of Bureau activity would have remained hidden. Instead, in the post-Watergate atmosphere, "President Gerald Ford and the intelligence agencies found it politically difficult to refuse such committee requests for relevant files and documents."<sup>61</sup>

Even with the shocking reports produced by the Church and Pike Committees, Congress did not act aggressively to oversee the FBI. Congress never passed the most far-reaching oversight measure, a legislative charter defining the Bureau's mission. Momentum was lost as Congress and the American people refused to face the painful

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<sup>59</sup> Theoharis, *Spying on Americans*, 63.

<sup>60</sup> Kathryn S. Olmsted, *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and FBI* (Chapel Hill: University of North Carolina Press, 1996), 2.

<sup>61</sup> Theoharis, *Spying on Americans*, 11.

facts these investigations brought to the fore.<sup>62</sup> Instead of seizing the opportunity to create meaningful oversight of the Federal Bureau of Investigation, members of Congress again ceded their responsibility to the executive branch, which they hoped would not repeat the unique (and therefore not systemic) mistakes of the Nixon administration.

Senator Frank Church's Senate Select Committee on Intelligence conducted the most thorough investigation of past FBI misconduct.<sup>63</sup> The committee uncovered a host of abuses, such as the COINTELPRO program, the targeting of Martin Luther King, Jr., extensive wiretapping, bugging, and break-ins, and the Bureau's actions as the political intelligence arm of the White House. In its final report, the Committee concluded that "the root cause of the excesses which our record amply demonstrates has been failure to apply the wisdom of the constitutional system of checks and balances to intelligence activities."<sup>64</sup> Because those checks and balances had not been followed with regard to intelligence agencies, there developed excessive executive power, excessive secrecy, and avoidance of the rule of law.<sup>65</sup> Without a counterbalance to executive power, abuses within the intelligence community were able to flourish undeterred. To end this reliance on executive power in the intelligence agencies, the committee recommended "the concept of vigorous Senate oversight to review the conduct of domestic security activities

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<sup>62</sup> Olmsted, 6-7.

<sup>63</sup> Importantly, Otis Pike's House Committee had its final report suppressed by Congress. Church managed to get his hearings and final report published by the Senate, and they remain critical to understanding this period in federal intelligence policy. See Theoharis, *Spying on Americans*, xiv. Another reason for Church's success was because "the Senate, with only one-third of its seats up for reelection in 1974, had fewer post-Watergate reformers who wanted to make radical changes. In addition, because they represented larger and more diverse constituencies, the senators had to be more moderate in their approach. Throughout the entire inquiry, the Senate investigators proved more willing to compromise and more determined to attain bipartisan agreement." Olmsted, 51.

<sup>64</sup> *Intelligence Activities and the Rights of Americans*. iii.

<sup>65</sup> Ibid., 292.

through a new permanent intelligence oversight committee.”<sup>66</sup> A permanent committee was eventually established, but that was the only recommendation acted upon favorably by the Senate.<sup>67</sup> Rather than the wide-ranging reforms called for by the Church Committee, members of Congress again decided to avoid imposing limits on the power of the intelligence agencies. Even during the hearings, when Committee members interrogated Bureau officials, they seemed to endorse the need for stricter legislative oversight. Members of Congress, however, passed on this unprecedented opportunity to achieve this objective.

In late 1975, the Church Committee conducted a series of hearings at which current and former Department of Justice and FBI officials testified. The purpose of those hearings, Committee members affirmed, was “not to impair the FBI’s legitimate law enforcement and counterespionage functions, but rather to evaluate domestic intelligence according to the standards of the Constitution and the statutes of our land. If fault is to be found, it does not rest in the Bureau alone. It is to be found also in the long line of Attorneys General, Presidents, and Congresses who have given power and responsibility to the FBI, but have failed to give it adequate guidance, direction, and control.”<sup>68</sup> By the end of the hearings, the committee had developed sufficient information to “legislate appropriate standards for the FBI.”<sup>69</sup> As Senator Mondale stated, “Hundreds of thousands of Americans were victims of [the FBI’s] surveillance program. Most of this was done in secret. Much of it was kept from Congress and the Justice Department and all of it from

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<sup>66</sup> Ibid., 339.

<sup>67</sup> Olmsted, 2-3.

<sup>68</sup> US Congress, Senate, *Hearings before the Select Committee to Study Governmental Operations with Respect to Intelligence Activities* 94th Cong., 1st sess., Volume 6: Federal Bureau of Investigation (Washington, D.C.: United States Government Printing Office, 1976) 1.

<sup>69</sup> Ibid., 2.

the American people.”<sup>70</sup> The senators even asked Justice Department and Bureau witnesses what should be done to avoid future abuses. To a man, every witness, from former attorneys general to Director Clarence Kelley, stated that Congress needed to create guidelines that would govern Bureau operations.<sup>71</sup> These guidelines should clarify the Bureau’s role in domestic affairs and explicitly define both permissible and impermissible conduct. The guidelines should specifically bar the use of certain techniques while simultaneously protecting the Bureau from congressional claims of inaction. At times, the various witnesses argued, individual congressmen had pushed the Bureau to investigate certain activities. Without a Congressional mandate, it would be impossible for Bureau officials to know if these pressures reflected the will of Congress.<sup>72</sup> At times, moreover, the Bureau had been vilified for failing to stop catastrophes, such as the Pearl Harbor attack and the Kennedy assassination. On other occasions, Bureau officials felt unnecessarily restricted. Bureau officials, then, were “damned for doing too much and damned for doing too little.”<sup>73</sup> By imposing a legislative mandate, Congress would inform Bureau officials how far FBI agents’ actions could go.

One reason the Senate eventually avoided acting on the Church Committee’s recommendations was the nature of the Committee’s findings. The Church Committee deemed the abuses it had unearthed about the nation’s intelligence agencies to be aberrations. Such abuses could be readily corrected simply by replacing the corrupted

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<sup>70</sup> Ibid., 62.

<sup>71</sup> See Ibid., 95, 212, 221, 263, 267, 286.

<sup>72</sup> Ibid., 81.

<sup>73</sup> Ibid., 82.

officials without congressional intervention.<sup>74</sup> Another reason for Congress's inaction was that prominent members of Congress had been responsible for past failures to oversee these agencies. In truth, "Congress had not lacked oversight committees; it had simply lacked *zealous* oversight committees. Many senior members like Senator John Stennis and Representative Edward Hebert had preferred to overlook the intelligence agencies' excesses. They formed a strong, self-interested lobby against revelation and reform."<sup>75</sup> As the public tired of battering American institutions, these influential members' power increased. Last, for many members of Congress across the political spectrum, the nature of the Cold War required secrecy and a strong executive. Because public outrage proved to be temporary and ephemeral, legislators were never forced to choose between American ideals and Cold War realities. In the end, the desire for strict congressional oversight never overcame the continuing belief in the need for secrecy. A government open and accountable to the people seemed incompatible with a nation with powerful enemies, both at home and abroad.

Even as the Church and Pike Committees concluded their work with little visible accomplishment, other congressional committees were investigating Bureau practices that allowed secrecy to overshadow executive or legislative oversight. Throughout 1975 and 1976, House subcommittees on civil liberties and government operations examined the creation and ultimate destruction of some of Hoover's secret files. In doing so, these subcommittees sought to answer whether Justice Department officials could make

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<sup>74</sup> Olmsted, 109.

<sup>75</sup> Olmsted, 185.

reforms or if legislation would be necessary.<sup>76</sup> According to the testimony of the attorney general, such legislation would not be necessary, as he was drafting guidelines to put an end to Bureau officials' autonomy in beginning political investigations.<sup>77</sup>

In February 1975, Attorney General Edward Levi was called before the House Subcommittee on Civil and Constitutional Rights in order to discuss "the information-gathering practices and the files of the Federal Bureau of Investigation with respect to public officials, members of Congress, and citizens generally." While Levi admitted his knowledge was limited, as he had only been attorney general for three weeks, he confirmed that his duty was to "develop guidelines, after appropriate consultation, on the acquisition, retention, and use of this information."<sup>78</sup> His testimony would also highlight Hoover's so-called "Official and Confidential File," as there had been "rumors and concern about them as being dossiers, having a potential chilling effect on civil liberties and the political process."<sup>79</sup> Levi then described the contents of these files, stating they included 164 files, with the vast majority (131) containing material from only one decade.<sup>80</sup> The subjects of the files were also described as including material on policy, administration, material of interest to Hoover, reference material, protection of sensitive sources, and material on public persons.<sup>81</sup> Levi's concluded he did not "know why these files were retained in the suite of offices of the Director of the Federal Bureau of Investigation. The range of items in the OC files includes many routine, mundane, and

<sup>76</sup> U.S. Congress, House, *FBI Oversight*, Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary, House of Representatives, 94th Cong., 1st sess. (Washington, D.C.: United States Government Printing Office, 1975), 1. Hereafter, *FBI Oversight* Hearings (1975).

<sup>77</sup> U.S. Congress, House, *FBI Oversight*, Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary, House of Representatives, 94th Cong., 2nd Sess. (Washington, D.C.: United States Government Printing Office, 1976), 252. Hereafter, *FBI Oversight* Hearings (1976).

<sup>78</sup> *FBI Oversight* Hearings (1975), 3.

<sup>79</sup> *Ibid.*, 3-4.

<sup>80</sup> *Ibid.*, 8.

<sup>81</sup> *Ibid.*, 8-9.

totally innocuous materials. I believe it can be concluded that the OC files maintained by Director Hoover do not, except in very limited instances, warrant the term 'dossiers' in the pejorative sense."<sup>82</sup> The effect of such files, however, caused fear and distrust of Bureau officials and Levi felt "such files should not be maintained."<sup>83</sup> In part, Levi testified, the problem stemmed from abuses from within the White House. These issues, he concluded, needed to be corrected in order to fully prevent the Bureau from acting improperly in the future.

According to Levi, Bureau files were particularly tempting for executive-branch officials because they provided information about political opponents and insight into critics. There were three threads behind these improper requests. The first was White House subordinates, supposedly acting on behalf of the President, would request information from subordinate officials within the Bureau. The second was that the request was often couched in the language of national security. The third was that Bureau officials were hesitant to use "available safeguards," such as the attorney general, to deflect improper requests.<sup>84</sup> To correct these abuses, Levi suggested an executive order banning subordinates from making requests of the Bureau, thereby limiting such requests to the president or other high-ranking administration officials. He also recommended Congress pass legislation making it a criminal offense to disseminate information from Bureau files. He had also ordered the director of the Bureau search requests and report any improper ones to Levi.<sup>85</sup> The major task left to Department of Justice officials, according to Levi, was the creation of proper guidelines that could limit Bureau

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<sup>82</sup> Ibid., 10.

<sup>83</sup> Ibid., 11.

<sup>84</sup> Ibid., 11-12.

<sup>85</sup> Ibid., 12-13.

investigations to violations of federal law and end improper use of the Bureau for political purposes.<sup>86</sup> Next to testify was Bureau Director Clarence Kelley, who testified that he supported Levi's approach. He also testified that the destruction of part of the files in Hoover's office had begun before Hoover's death and was continued by his personal secretary after death. The files Hoover had begun to destroy were "purely personal in nature," mainly being "from prominent people whose autograph or signature might be used by some for sale or other purposes such as writing a book."<sup>87</sup> With that statement, the testimony concluded and members of the subcommittee began questioning the witnesses. In their questions, committee members pushed Levi and Kelley to defend their positions and asked that any guidelines be crafted with input from the committee.

The majority of the questions from subcommittee members dealt with the creation of Bureau guidelines. They asked, for example, if it would be appropriate to exclude all but the president from making executive-branch requests.<sup>88</sup> They also recommended that the practice of keeping separate files within the director's office be banned Levi's guidelines.<sup>89</sup> Most important, they discussed the creation of files on members of Congress and whether this practice was justifiable. While most felt the practice was inexcusable, there was no call among the committee members to ban the practice outright. Only one member suggested that Levi issue a temporary ban "any collection of information on private citizens who are not suspected of crime, who are not being considered for public office, for whom there is no authorization in a Federal statute to investigate."<sup>90</sup> Levi responded that this could put the Bureau in an awkward position, as such information was

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<sup>86</sup> Ibid., 13.

<sup>87</sup> Ibid., 14.

<sup>88</sup> Ibid., 20.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid., 22.

usually not sought by Bureau officials, but passed along to the Bureau. Destroying such records as irrelevant, Levi noted, would create “an atmosphere of suspicion,” as it seemed Bureau officials were hiding information.<sup>91</sup> As the questioning ended, the members of the committee had made several suggestions about possible legislation to end Bureau abuses.<sup>92</sup> They also promised to recall Attorney General Levi as his guidelines for limiting Bureau abuses developed. Almost one year later, Levi returned to testify before the subcommittee, but without fully developed guidelines.

Before Levi’s next appearance before the subcommittee, its chair, Representative Don Edwards, a Democrat from California (and former FBI agent), reminded his colleagues that Levi had testified previously about the Bureau’s domestic intelligence activities. He argued “this subject and this responsibility” was “the stickiest thing the FBI must contend with. It is fraught with danger, not only to the FBI, but to the public. One of the problems is that there is no explicit law that delineates its responsibilities and designates the FBI as the official organization that shall be in charge of domestic intelligence within the United States. And perhaps because of the lack of congressional guidelines, congressional law, the domestic intelligence program over the years has done great damage to the FBI and the public’s opinion of it.” Because of this damage, “the preparation of the guidelines that we are going to talk about today is a welcome step. Because it is terribly important that we somehow define and limit the domestic intelligence activities which are very important, very essential to this country. Both Congress and the Department of Justice have been most negligent over the years in their

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<sup>91</sup> Ibid., 23.

<sup>92</sup> For example, Congressman Drinan mentioned a proposal that mandated the destruction of the files on members of Congress that did not relate to crimes committed by that member or threats against that member. See Ibid., 40.

responsibilities to be interested in the problem.” The intention of the subcommittee, Edwards concluded, was to “write law” on this matter, with the assistance of Attorney General Levi and Bureau Director Kelley.<sup>93</sup> As Congressman Butler saw it, these hearings would “develop a jurisdictional basis for the FBI,” concluding that this basis would allow for “FBI oversight that should be spelled out in statute as opposed to that which will be left to executive order or guidelines.”<sup>94</sup> Some members of the subcommittee felt the guidelines were too “broad” and gave “license to exactly the same kind of activity that the FBI has carried on up until now without the benefit of guidelines.”<sup>95</sup> With that background established, Attorney General Levi testified about the creation of new guidelines to limit political intelligence within the FBI.

As he began his testimony, Levi recalled that, at his last appearance, he had “promised to start work preparing guidelines to govern Bureau practices in the future.” To his consternation, however, “the preparation of those guidelines has been slow and difficult—much slower and more difficult than I realized.”<sup>96</sup> The draft guidelines he presented, therefore, could only be “helpful” as the subcommittee considered legislation to act as the basis of Bureau operations.<sup>97</sup> Most important, Levi argued that members of the subcommittee should not limit the necessary flexibility required in criminal investigations. “It must be remembered,” he told the subcommittee, “that rigid directions governing every step in the investigative process could sacrifice the flexibility that is necessary if an investigative agency is to adapt to the diverse factual situations it must

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<sup>93</sup> *FBI Oversight Hearings* (1976), 251-252.

<sup>94</sup> *Ibid.*, 252.

<sup>95</sup> *Ibid.*, 252-253.

<sup>96</sup> *Ibid.*, 253.

<sup>97</sup> *Ibid.*

face.”<sup>98</sup> As long as members of the subcommittee remembered this distinction, Levi was eager to work with them in drafting new legislation to guide Bureau activities.

The first guideline Levi discussed with the subcommittee was a requirement that all requests for investigations that came from the White House must be in writing and signed by the President or his legal counsel. The person being investigated would have to be informed the investigation was occurring and would need to consent to any material being kept within Bureau files.<sup>99</sup> This same procedure would apply to those appointed to judicial positions or congressional staffs. More important, however, Attorney General Levi testified about new guidelines for domestic intelligence investigations. These guidelines would “proceed from the proposition that Government monitoring of individual or groups because they hold unpopular or controversial political views is intolerable in our society.”<sup>100</sup> The proposed guidelines required domestic intelligence investigations to be tied to criminal misconduct, which would, as Levi testified, move the investigation toward the “detection of unlawful conduct and not merely the monitoring of disfavored or troublesome activities and surely not of unpopular views.”<sup>101</sup> To accomplish this, Levi’s guidelines inserted the attorney general and the Department of Justice more fully into domestic intelligence investigations. Bureau officials would have to report any full investigation to the attorney general within a week. For Levi, it was important that the Bureau “have primary responsibility for controlling itself,” and he, therefore, felt congressional and department oversight needed to happen alongside, not

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<sup>98</sup> Ibid.

<sup>99</sup> Ibid., 256.

<sup>100</sup> Ibid., 257.

<sup>101</sup> Ibid., 258.

over the top, of Bureau actions.<sup>102</sup> Department of Justice officials would close any inappropriate investigation and annual reviews would occur on every domestic intelligence case.<sup>103</sup> In order to maintain flexibility, however, Levi's guidelines created another type of investigation with less departmental oversight.

According to Levi's testimony, preliminary investigations "would not involve the infiltration of informants into organizations or groups or such techniques as electronic surveillance or mail covers" and would only be authorized "on the basis of information or allegations that an individual, or individuals acting in concert, may be engaged in activities which involve or will involve the use of force or violence and the violation of Federal law."<sup>104</sup> These investigations would be limited to public sources or records and surveillance for identification purposes only. Any further surveillance would only be allowed during full investigations, which required FBI Headquarters authorization.<sup>105</sup> As the testimony continued, the members of the subcommittee discussed various hypothetical situations, with analysis from the Attorney General on their likelihood under the proposed guidelines. At the conclusion of this testimony, Chairman Edwards thanked the Attorney General and said the subcommittee intended to hold "future hearings on the matter of guidelines as they are developed."<sup>106</sup> In fact, no further hearings about these guidelines were held and members of Congress failed to pass any legislative restrictions on Bureau actions. Instead, Attorney General Levi's guidelines became the basis for future investigations and Congress contented itself with a perfunctory oversight responsibility, mainly through permanent intelligence committees in both houses. The

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid., 258.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid., 259.

<sup>106</sup> Ibid., 288.

momentum for a legislative overhaul of the Bureau's activities, created in the wake of the Watergate scandals, dissipated, and the executive branch continued to act as the main force in shaping Bureau policy.

The last major congressional discussion about Bureau activities in the mid-1970s came from a subcommittee of the House Committee on Government Operations, chaired by Congresswoman Bella Abzug. The primary focus of these hearings was to discuss the destruction of J. Edgar Hoover's "personal and confidential" files after his death. The purpose, according to Abzug, was to both "document the abuses" of the FBI and "to probe and understand why and how an agency dedicated to law enforcement could become a significant lawbreaker."<sup>107</sup> Congress began this process by strengthening provisions of the Freedom of Information Act in 1974, which "removed some of the roadblocks which the agencies placed in the way of the public's right to information."<sup>108</sup> Abzug's subcommittee hoped to continue this strengthening by investigating the causes behind the loss of dozens of drawers of files from J. Edgar Hoover's office after his death.

Abzug began by questioning the Acting Attorney General at the time of Hoover's death, Richard Kleindienst. He testified that, after learning of Hoover's death, he ordered Hoover's office locked until an Acting Director could be named. He did so in order to protect the confidential nature of the Bureau's files and to safeguard Hoover's private memorabilia.<sup>109</sup> He also said that, at the time, he had no "information that there were

<sup>107</sup> U.S. Congress, House, *Inquiry into the Destruction of Former FBI Director J. Edgar Hoover's Files and FBI Recordkeeping*, Hearing before a Subcommittee of the House Committee on Government Operations, 94th Cong., 1st Sess. (Washington, D.C.: United States Government Printing Office, 1975), 1. Hereafter, *Inquiry into Destruction of FBI Files*.

<sup>108</sup> Ibid., 2.

<sup>109</sup> Ibid., 3.

secret files that Mr. Hoover allegedly collected on the private lives of prominent people.”<sup>110</sup> When pressed about these alleged files, Kleindienst told the subcommittee he was not impressed by their “volume, quality, and credibility.”<sup>111</sup> Only Congressman Steiger apologized for the line of questioning, telling Kleindienst that the subcommittee suffered from “hindsight syndrome” and, because of this, members failed to realize that there were constantly people “pointing a finger at existing establishment efforts, particularly in the enforcement field.”<sup>112</sup> Kleindienst was immediately put back on the defensive when he was asked whether it would have been a violation of his order to lock the office if any Bureau files were destroyed. Parsing words, Kleindienst testified he only “had the power to give any order excepting something that belonged to the U.S. Government.” Any personal files kept in Hoover’s office, therefore, would not fall under his order.<sup>113</sup> The person with the closest knowledge about Hoover’s files testified next, describing those files in detail and how it was decided which would be destroyed.

Hoover’s long-time executive assistant, Helen Gandy, testified before the subcommittee about Hoover’s files. She told the members that there were “two sets of files. Mr. Hoover’s personal correspondence was one set, and the so-called official confidential files were the second set.”<sup>114</sup> Following Hoover’s instructions upon his death, the personal correspondence files were culled from the official confidential files and destroyed. The remaining official confidential files were transferred to W. Mark Felt, the Bureau’s Associate Director.<sup>115</sup> Gandy continued to destroy the personal

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<sup>110</sup> Ibid., 3.

<sup>111</sup> Ibid., 9.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid., 18.

<sup>114</sup> Ibid., 36.

<sup>115</sup> Ibid.

correspondence for over a week, some files in Bureau headquarters and others after the files had been moved to Hoover's home.<sup>116</sup> The most explosive testimony concerned a particular Bureau file about "black bag jobs." Under questioning from Congresswoman Abzug, Gandy admitted the file was marked "P.F." for "personal file," but had been transferred at some point to the official confidential file.<sup>117</sup> When asked if mismarked files were transferred frequently, Gandy replied no. In fact, mismarked files were rare, according to Gandy, and she could not think of one besides the black-bag job file.<sup>118</sup> She noted Abzug's concern, which was that files may have been inappropriately destroyed, but Gandy was certain they were not. She had gone through each file carefully and had only destroyed those which had no relevance to Bureau activity.<sup>119</sup> Any time a member of the subcommittee confronted Gandy with a specific file, she could not recall seeing it before.<sup>120</sup> W. Mark Felt and John Mohr, Assistant Director of the FBI and director of the administrative division (which had oversight over the files section) made similar statements to the subcommittee.<sup>121</sup> Congressman Steiger felt "convinced that whatever heinous act the FBI has committed has been aired and reaired," and further discussion of the matter was a waste of time.<sup>122</sup> In fact, because all of the damaging information the Bureau had kept was now public, Steiger was convinced it was impossible to conceal anything in such a large Bureau. The Bureau's willingness to admit to their "greatest mistakes" impressed Steiger and showed that Bureau officials were not attempting to hide

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<sup>116</sup> Ibid., 37.

<sup>117</sup> Ibid., 44.

<sup>118</sup> Ibid., 46.

<sup>119</sup> Ibid., 48, 45.

<sup>120</sup> For example, see Gandy's testimony about files on political figures, Ibid., 58.

<sup>121</sup> For example, Mohr testified that the previously-mentioned "black bag file," which Abzug brought to his attention as marked as "Do Not File" was the only such-marked file kept in Hoover's records. Abzug's concern was that such files could have been destroyed without public knowledge. See Ibid., 84.

<sup>122</sup> Ibid., 118.

anything.<sup>123</sup> By the end of the hearing, the subcommittee had heard much testimony about the Bureau's files but had come no closer to developing legislation to ensure additional oversight. Instead, subcommittee members concluded they had to "scrutinize carefully those who disregard or abuse their constitutional commitment" without clarifying exactly how that scrutiny would come.<sup>124</sup> As with other congressional committees of the 1970s, action against Bureau abuses was proposed but never enacted.

By the end of the 1970s, the momentum for thorough Congressional oversight of the Federal Bureau of Investigation had dissipated. The Bureau retreated again into the murky hands of executive branch officials who valued its services even in ways possibly incompatible with American ideals. While Congress never passed a legislative charter for the Bureau, permanent intelligence oversight committees were established in both houses. These committees were tasked with overseeing the extent of intelligence activities, however, executive control remained firmly established. The secrecy created by J. Edgar Hoover over his decades as director reemerged in new forms, ultimately undermining any effective oversight these committees might have sought. Members of Congress again found themselves either unwilling or unable to exert true oversight responsibility over this critical bureau within the executive branch. As had been the case since 1908, members tried to restrict the Bureau's independence, only to be pushed aside in favor of executive oversight or, just as frequently, station themselves along the sidelines.

This study has explored the relationship between Congress and the Federal Bureau of Investigation over the years 1908 to 1975. This history was marked by periods of intimate contact. However, the most common theme had Congress generally

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<sup>123</sup> Ibid., 118.

<sup>124</sup> Ibid., 126.

inattentive to the actions of the investigative branch of the Department of Justice. At its inception, the Bureau of Investigation was subject to scathing criticism by members of Congress, who questioned the necessity and character of men looking into others' private lives. These "detectives" must necessarily be "liars" and men without "high moral ideals."<sup>125</sup> Yet, when President Theodore Roosevelt, at the urging of Attorney General Bonaparte, established the Bureau during a congressional recess, members of Congress disagreed with the procedure more than the act itself. Instead of calling on the president to explain his actions, they disagreed with the letter he sent, which they felt reflected poorly on "the integrity of the Congress." The letter, and not the act of creating the new detective division within the Department of Justice, was a "courtesy shown by one department" to another.<sup>126</sup> Committees convened to examine the President's message, but not his actions.

Almost immediately after President Roosevelt's creation of the Bureau of Investigation, members of Congress began adding to its authority. In 1910, the passage of the Mann Act enabled the federal government to investigate and prosecute white slavery that crossed state borders. While the debate raged in Congress about the "prostitution of government functions by interference, under false pretenses, with matters over which Congress has nothing to do, but which rest exclusively in the power and control of local authorities," ultimately, the desire for centralization common during the Progressive period prevailed.<sup>127</sup> Members of Congress debated whether such a statute should be enacted, but once it was passed, no further investigations into how the federal government investigated violations of the statute were conducted. From the outset of the

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<sup>125</sup> *Congressional Record* v. 43, 3129,

<sup>126</sup> *Ibid.*, 314-315.

<sup>127</sup> *Ibid.*, 823

Bureau's creation, in their enthusiasm to empower their branch of government, members of Congress lost sight of their oversight responsibilities.

During both World Wars, Congress willingly increased the size, budget, and powers of the Bureau of Investigation. They did so on the belief that this expansion was necessary to protect the nation from internal and external threats. When Congress withheld funds deemed necessary, Bureau officials pushed executive branch officials to pressure members of Congress to reconsider. To guarantee national security, more power had to be ceded to the FBI. During World War I, this power was supplemented by private organizations that worked with the Bureau to uncover and threaten "subversives." During World War II, Bureau officials performed this task themselves, aided by secret directives from President Roosevelt. These directives formed the basis for keeping wartime powers after the emergency ended. Instead of decreasing in size and responsibility, as it had after World War I, the Federal Bureau of Investigation continued to grow after World War II. Without the acquiescence of willing congressmen, who hoped to achieve political points by allying themselves with the Bureau, this growth would have been impossible.

During the Cold War, members of Congress worked closely with the FBI to create an atmosphere of anti-communist hysteria. Official liaison relationships were made between the Bureau and the House Un-American Activities Committee and the Senate Internal Security Subcommittee, while a clandestine relationship existed between Hoover and Senator McCarthy. All of these relationships were dominated by Bureau officials, who gave information when it was useful and withheld the same information when they felt they might be exposed. Secrecy proved most vital. Without it, the Bureau's political

mission would have been exposed, and the carefully crafted image of a non-partisan, fact-finding bureau would prove to be false.

Bureau officials found other ways to ensure their growth during the Cold War. Approached by the House Appropriations Committee to aid in investigating budget requests, Bureau officials willingly assigned men to aid the committee, while simultaneously reporting back to the Bureau about their investigations. Instead of challenging the growth of the Bureau's budget, the House Appropriations Committee simply rubber-stamped Bureau appropriations in highly ceremonial hearings. Aided by close relations between committee chairmen and Director Hoover, the Bureau's budget never experienced a decrease. Hoover happily offered any assistance he could provide to the committee chairmen, proving his utility to them and the necessity of maintaining his requested appropriations. Instead of carefully checking each request made by Bureau officials, the House Appropriations Committee abandoned its oversight responsibilities.

The most common reason members of Congress called for enhanced oversight of the Federal Bureau of Investigation, from World War I through 1975, was potential abuses of power by the Bureau. Congress acted quickly when its members accused the Bureau of investigating them or when agents were accused of mistreating the public. In the aftermath of the Palmer Raids, members of Congress questioned the treatment of those suspected of being alien subversives. Instead of acting to change the Bureau's mission, members of Congress lost momentum through endless debate. In the end, the Bureau was not led by Congress. Even when proven to have investigated members of Congress, including Senator Burton Wheeler, Congress did not act to change its relationship with the Bureau. Instead, Congress left it to the executive branch or the

Bureau itself to change its procedures. By blaming any missteps on the actions of misguided individuals, Congress avoided any substantive changes to the Bureau.

With the growth of executive power dominant throughout the twentieth century, members of Congress found it difficult to carve out their oversight responsibilities. Challenging the presidency led to questions of congressional loyalty. Political deference to the leader of the party became required. Instead of zealously guarding its oversight responsibilities, Congress willingly lessened its role in the name of protecting national security. What members failed to realize was they did have a role in national security. Through investigations, hearings, and appropriations, members of Congress could control the growth of executive power. Challenging executive privilege and the secrecy required for security could have brought Congress an increased role, even during the trying events of the twentieth century. Instead, members of Congress opted to work with the executive branch for political gain. While this might have been in those members' immediate political interests, the results were catastrophic. The leaders of the Federal Bureau of Investigation began to overstep the rule of law, confident in the fact they would not be held accountable. They acted independently of attorneys general and presidents. They knew members of Congress would not ask difficult questions. All of these actions proved detrimental to the notion that the United States is a nation of laws, not men.

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